

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 - - -
5

6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION :
9 :
10 APPLIES TO ALL CASES : NO.
11 : 1:17-MD-2804
12 :
13 :

14 - HIGHLY CONFIDENTIAL -
15

16 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
17 - - -
18

19 December 18, 2018
20 - - -
21

22 Videotaped deposition of
23 MICHAEL PERFETTO, taken pursuant to
24 notice, was held at the offices of Lief
 Cabraser, LLP, 250 Hudson Street, New
 York, New York, beginning at 9:09 a.m.,
 on the above date, before Michelle L.
 Gray, a Registered Professional Reporter,
 Certified Shorthand Reporter, Certified
 Realtime Reporter, and Notary Public.

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I N D E X

Testimony of:

MICHAEL PERFETTO

By Ms. Baig 15

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4

5 Direction to Witness Not to Answer

6 PAGE LINE

None.

7

8 Request for Production of Documents

9 PAGE LINE

None.

10

11 Stipulations

12 PAGE LINE

None.

13

14 Questions Marked

15 PAGE LINE

None.

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1 THE VIDEOGRAPHER: We are
2 now on the record.

3 My name is Henry Marte. I'm
4 a videographer with Golkow
5 Litigation Services.

6 Today's date is December 18,
7 2018. And the time is 9:09 a.m.

8 This videotaped deposition
9 is being held at 250 Hudson
10 Street, New York, New York, in the
11 matter of National Prescription
12 opiate litigation.

13 The deponent today is
14 Michael Perfetto.

15 All appearances are noted on
16 the stenographic record.

17 Will the court reporter
18 please administer the oath to the
19 witness.

20 - - -

21 ... MICHAEL PERFETTO, having
22 been first duly sworn, was
23 examined and testified as follows:

24 - - -

1 EXAMINATION

2 - - -

3 BY MS. BAIG:

4 Q. Hi, good morning
5 Mr. Perfetto.

6 A. Good morning to you.

7 Q. We met briefly off the
8 record, but could you please state your
9 full name and address for the record?

10 A. Sure. Michael Perfetto. 93
11 Ros Hill Road, Conklin, New York.

12 Q. And you've had your
13 deposition taken before, correct?

14 A. Yes.

15 Q. And what case was that?

16 A. Various cases.

17 Q. Okay. How many times have
18 you had your deposition taken?

19 A. I don't know specifically,
20 because I was a corporate witness and
21 there's a lot of depositions that are
22 associated with that.

23 Q. More than ten or so?

24 A. Maybe around ten.

1 Q. Okay. And when was the last
2 time you had your deposition taken?

3 A. When I was with Actavis so
4 it would have been 2012 maybe. Or '11.
5 '12 or '11.

6 Q. And have any of those prior
7 depositions related to opioid
8 medications?

9 A. Not to my knowledge.

10 Q. Okay. So you're familiar
11 with the deposition procedure, correct?

12 A. Yes.

13 Q. Okay. And what did you do
14 to prepare for today's deposition?

15 A. I met with my lawyers
16 yesterday.

17 Q. And how long did you meet
18 with them for?

19 A. A few hours.

20 Q. And did you read any
21 depositions in preparation for this
22 deposition?

23 Did you read any deposition
24 transcripts in preparation for this

1 deposition?

2 A. Other -- other people that
3 have been deposed?

4 Q. Mm-hmm.

5 A. No, ma'am.

6 Q. Okay. Have you talked to
7 anybody at Allergan or Actavis or any of
8 the Allergan companies with respect to
9 this deposition?

10 A. No, ma'am.

11 Q. And are you being paid for
12 testifying today?

13 A. Your -- your organization
14 sent me \$50.

15 Q. And are you being paid in
16 addition to that for testifying today?

17 A. No, ma'am.

18 Q. Okay. And did you look at
19 any documents in preparation for your
20 deposition today?

21 A. Yes.

22 Q. Did any of those refresh
23 your recollection?

24 A. There was a lot of -- a lot

1 of documents.

2 Q. Okay. And did you bring
3 those documents with you today?

4 A. No, ma'am.

5 MS. BAIG: Counsel, can you
6 represent that the documents he
7 reviewed have been produced in
8 this action?

9 MR. ROTH: Yes.

10 MR. LUXTON: They have been.

11 Can we also just get a quick
12 stipulation on the record before
13 we get started? Steve Luxton on
14 behalf of the Teva defendants. I
15 think counsel will stipulate that
16 an objection for one is an
17 objection for all, as to
18 Mr. Perfetto's attorneys for the
19 purpose of this deposition, which
20 would be his personal attorney,
21 Ms. Metcalf, as well as attorneys
22 for Allergan and Teva.

23 THE VIDEOGRAPHER: There's a
24 microphone right behind your iPad.

1 There's another microphone.

2 MR. LUXTON: Is that
3 stipulation okay, Counsel?

4 MS. BAIG: That's fine.

5 MR. LUXTON: Great.

6 BY MS. BAIG:

7 Q. Are you familiar with the
8 complaint on file in this action?

9 A. I know it's -- it has to do
10 with opioids.

11 Q. What's your understanding of
12 the nature of the complaint?

13 A. The selling -- it involves
14 the selling of opioids, from my
15 standpoint.

16 Q. And are you familiar with
17 what the alleged wrongdoing is?

18 A. Just the -- the selling of
19 opioids in the market.

20 Q. Can you walk me through,
21 briefly through your education and your
22 work history?

23 A. Sure. When do you want to
24 start?

1 Q. Well, let's start with your
2 education.

3 A. How -- how far back?

4 Q. Let's say college level.

5 A. Okay. I went in 1978 to
6 Bloomsburg State University in
7 Pennsylvania, and I graduated from there
8 in 1982. I got a BS in accounting. It's
9 a business degree.

10 From there I went and I -- I
11 went at nights to get my MBA at
12 University of New Haven in West Haven,
13 Connecticut. That was in 1982 to 1985.
14 That was primarily a night -- going at
15 night; I got an MBA in marketing.

16 And that would be the extent
17 of my education.

18 Q. And can you walk me through
19 your work history briefly since then?

20 A. From the beginning?

21 Q. Well, just the companies
22 that you've worked with.

23 A. Oh, okay.

24 Q. Since that time, for

1 starters.

2 A. I -- I first started with
3 Sikorsky Aircraft, which was a United
4 Technology Company in Stratford,
5 Connecticut. And I was a pricing
6 analyst, contract negotiator with
7 government contracts. And I believe I
8 stayed there five years.

9 Then I went to Fisons. It
10 was a British company, a pharmaceutical
11 brand company. And they are out of
12 Rochester, New York. And I started out
13 as a, like what we call a detail rep. I
14 would be calling on doctors and selling
15 branded products to doctors. I believe I
16 did that for a year and a half.

17 Then I got promoted to
18 national account manager, or national
19 account rep. And what I did there was I
20 was calling on trade accounts which would
21 be the wholesalers and the CVSS and Fay's
22 Drugs and Happy Harry's and the Rite Aids
23 of the world.

24 Then I got promoted there to

1 national account manager and I picked up
2 some responsibility for --
3 over-the-counter brokers were reporting
4 to me and we were selling a little bit of
5 OTC items along with our branded
6 products.

7 I believe I was there until
8 19 -- right around 1990. So from Fisons,
9 the branded company, I went to Barr
10 Laboratories in Pomona, which is in
11 Rockland County, New York.

12 And I went there. And that
13 was primarily a generic company. And I
14 was there until 2003. I was selling
15 generics. I was a national account rep,
16 I believe was the title. And I called on
17 primarily mail order customers; CVS, the
18 drug chain; Cardinal, the wholesaler;
19 Genovese Drug; Rock Bottom Drug, a lot of
20 small chains, selling generic
21 pharmaceuticals to the trade sector.

22 From there I went to
23 Alpharma. I became director of sales. I
24 was -- that's another generic company.

1 It was based in Cranford, New Jersey. I
2 was director of sales, directing a team
3 of maybe five reps selling primarily
4 generic pharmaceuticals.

5 I was primarily focused on
6 the field. I wasn't in the corporate
7 office. I did that for probably a year,
8 maybe two years. And then I took over
9 the custom service group. And that was
10 all within Alpharma.

11 Then Alpharma got bought by
12 Actavis. I think that was around 2005.
13 I don't have a resumé in front of me, so
14 I'm estimating these dates.

15 2005, Actavis, Icelandic
16 company, bought Alpharma, probably around
17 the time I was -- I believe I was still
18 director of sales and customer service:
19 There was a time period where I
20 eventually picked up marketing,
21 eventually picked up contracts and
22 pricing. That was -- that was like two
23 years down the road, two, maybe three
24 years down the road. I don't -- without

1 having a resumé in front of me and
2 without having --

3 So eventually at Actavis I
4 became vice president of sales and
5 marketing.

6 Under that I was running the
7 contracts and pricing group, the customer
8 service group, the marketing group, and
9 the sales group.

10 And we were selling generic
11 pharmaceuticals. That would be up until
12 2012. And then in 2012, Actavis got
13 bought by -- I guess it's Watson at the
14 time, bought them. Watson bought
15 Actavis.

16 Because of a duplication,
17 they already had a VP of sales. My -- I
18 was no longer -- I was no longer needed,
19 so I was released from Actavis. And that
20 would have been, I think, January -- like
21 January 2nd. And then I started at Taro,
22 on January 3rd of 2013. So I didn't give
23 myself much of a break.

24 I was at -- I've been at

1 Taro/Sun from 2013 until August 1st of
2 2nd of calendar year '17. And then I
3 retired. At Taro, I was chief commercial
4 officer at Taro of their generic division
5 only. That's pretty much been a trend
6 throughout my career. Generic division
7 only.

8 Eventually Taro gave me the
9 over-the-counter business. So I managed
10 that.

11 And then I got Canada. So I
12 was running Canada generics business and
13 Canada OTC business. Then they gave me
14 Israel. So I ran the generic business in
15 Israel, as well as Canada, as well as the
16 U.S., for Taro.

17 Then in about '15, I think
18 it was early '15, like January, they gave
19 me the Sun business, along with the Taro
20 business. So I was running -- I had
21 people working for me obviously. But I
22 had Taro, with all those organizations
23 that I discussed. And then I had Sun. I
24 ran their OTC division, their Canadian

1 division, their generic division in the
2 U.S. And the only thing that I didn't
3 have in the U.S. was business development
4 for Sun, which was run out of -- run out
5 of India.

6 So I think that pretty much
7 gives you an overview.

8 Q. I think it does. Thank you.

9 A. Okay.

10 Q. Okay. Which of those
11 companies that you've just mentioned were
12 involved in the manufacture, sale or
13 distribution of opioid products?

14 A. Actavis and Sun.

15 Q. How about Watson?

16 A. I never worked for Watson.

17 Q. Okay.

18 A. They -- I mean -- I'm trying
19 to think. Maybe I -- maybe I wasn't --
20 well, I don't know if I was an -- I don't
21 know. I mean, I was -- it was that
22 transition period.

23 Q. Gotcha.

24 A. I was being phased out. I'm

1 not sure when the -- if I ever
2 transferred to a Watson employee.

3 Q. Okay. So Actavis, Taro.
4 And about what Alpharma?

5 A. Yeah. Alpharma, I'm sorry,
6 yeah. I always think of Actavis and
7 Alpharma as one in my mind.

8 Q. Okay. And for Taro, what
9 opioid products does Taro market?

10 A. I don't -- to the best of my
11 knowledge, I think Sun has some, but I
12 don't think Taro had any opioid products.

13 Q. Okay. And what's the
14 relationship between Taro and Sun? Do
15 you know? Sun is a subsidiary of Taro or
16 is it something different?

17 A. Sun is the parent company.

18 Q. Okay. And do you know what
19 products Sun has -- opioid products?

20 A. Oxycodone IRs. It's funny
21 how you -- how you retire, and it's like
22 not using a language. It just -- you
23 spoke Italian, and you didn't speak it a
24 while, it would be out of your mind.

1 Oxy IR. It was a big line,
2 so I'm sure they may -- they may have had
3 more. I'd have to look at their product
4 line and we can go through it. But I
5 don't have that in front of me.

6 Q. Okay.

7 A. Huge line.

8 Q. So your first work
9 experience with Schedule II drugs would
10 have been at Alpharma; is that right?

11 A. Yes, ma'am.

12 Q. When you were at Alpharma,
13 who did you report to?

14 A. When I first worked at
15 Alpharma, I reported to Bob Sanzen.

16 Q. And did that change over the
17 period that you were there?

18 A. Yes.

19 Q. Who else did you report to
20 there?

21 A. Doug Boothe.

22 Q. Anyone else?

23 A. There was a time where Doug
24 Boothe had a shared responsibility with

1 Divya Patel. They were like kind of
2 co-CEOs. So I guess theoretically I
3 reported to Divya Patel as well as Doug.

4 Q. And then did you and Doug
5 Boothe both move over to Actavis
6 together?

7 A. Well, Alpharma got bought by
8 Actavis. So we transitioned to Actavis.

9 Q. And when you transitioned to
10 Actavis, were you still reporting then to
11 Doug Boothe?

12 A. Yes.

13 Q. Did you report to anybody
14 else at Actavis?

15 A. No.

16 Q. And do you know who Doug
17 Boothe reported to at Actavis?

18 A. It would -- it depends on
19 the time period.

20 Q. Initially when you
21 transitioned to Actavis, who did Doug
22 Boothe report to?

23 A. To the best of my knowledge
24 without looking at an org chart, Siggi

1 Olafsson. It's an Icelandic name.

2 Q. And what would Siggi

3 Olafsson's position have been?

4 A. His title?

5 Q. If you know it. Or if you
6 don't know the title, his position.

7 A. He was -- he was like deputy
8 CEO, I think.

9 Q. And Doug Boothe at that time
10 would have been, what was his title?

11 A. North America head.

12 Commercial.

13 Q. And did that reporting line
14 change while you were at Actavis?

15 A. What reporting line?

16 Q. From you to Doug Boothe to
17 Siggi Olafsson. Did you -- did you
18 suggest a moment ago that you reported to
19 Doug Boothe only for a period of time and
20 then that changed?

21 A. No, I reported to Doug
22 Boothe all the time.

23 Q. The whole time at Actavis?

24 A. Yes.

1 Q. Okay. And when you were at
2 Actavis, did you say -- was that when you
3 had about five reports or did you have
4 more reports at Actavis?

5 A. It -- it depends on the --
6 on the time period.

7 Q. And let's -- let's start
8 initially and then walk me through the
9 change, that would be great.

10 A. You want -- okay. When you
11 say Actavis, do you mean Actavis
12 Alpharma?

13 Q. So I used Actavis because
14 you used Actavis. So what did you mean
15 by -- when you said -- oh, I see.

16 A. There's a -- there's an
17 acquisition there.

18 Q. Why don't we start with
19 Alpharma.

20 A. Okay. I -- when I first
21 came in I was director of sales running
22 the generic division for Alpharma only,
23 and I had probably three to four reps
24 reporting to me. I was more what I would

1 call a field manager. I was not in the
2 corporate office. Probably a year, maybe
3 two years. I -- along with that I picked
4 up customer service. So I had a director
5 of customer service and she reported to
6 me. She had -- this is going back a long
7 time. She had four, maybe four customer
8 service reps, so they reported to me.

9 Alpharma got bought by
10 Actavis in about '05 I think. And then
11 that's the status quo. I was basically
12 running sales and customer service.

13 And then maybe 2007-2008,
14 I'm -- going -- this is going back a
15 long -- ten years ago. I picked up
16 contracts and pricing which there was
17 another director there.

18 So I would have had my sales
19 reps. I would have had a director of
20 customer service, a director of contracts
21 and pricing, and then eventually or
22 around the same time, I picked up a
23 director of marketing.

24 And it pretty much stayed

1 that way at Actavis until I -- until I
2 was released.

3 Q. And when you say you picked
4 up director of marketing, you mean that
5 that became one of your titles; is that
6 right?

7 A. That became one of my
8 responsibilities. I had a -- I had a
9 woman that was a director of marketing,
10 and she reported directly to me.

11 Q. I see. And who was that?

12 A. Jinping McCormick.

13 Q. And that was at Alpharma?

14 A. No, that was at Actavis.

15 About 2008.

16 Q. Okay.

17 A. I'm -- I'm guessing. But
18 2008, 2007, at the time.

19 Q. So Jinping McCormick did not
20 start at Alpharma?

21 A. She did but she didn't
22 report to me.

23 Q. Okay. Do you recall what
24 her position was at Alpharma?

1 A. In -- she is in marketing.

2 Q. Okay.

3 A. I don't know the title.

4 Q. After you picked up the

5 responsibilities of contracts --

6 contracts and -- and marketing, in

7 addition to sales, about how many people

8 did you have reporting to you?

9 MR. ROTH: Object to the
10 form.

11 THE WITNESS: I'm just --
12 I'm thinking between like 20, 24
13 maybe. Because there's a lot of
14 customer service people. There's
15 a lot of pricing contracts people.
16 A lot of marketing -- most of
17 those people are internal staff
18 people.

19 BY MS. BAIG:

20 Q. How -- how large was the
21 marketing department when you were at
22 Actavis?

23 A. Four people.

24 Q. And that's just the generic

1 marketing department?

2 A. Yeah, we -- we only -- we
3 only sold generics.

4 Q. And was it -- that about the
5 same size at Alpharma, do you know?

6 A. I think Alpharma was -- was
7 a little -- little smaller. But I --
8 it's going back a long time. And I
9 was -- I was an external sales rep. So I
10 wasn't involved in the -- in the office.

11 Q. And do you remember whether
12 the same people moved from the Alpharma
13 marketing department to the Actavis
14 marketing department?

15 A. Some did.

16 Q. Do you remember who?

17 Jinping McCormick was one
18 person you identified. Anybody else?

19 A. David Myers.

20 Q. Anyone else you recall?

21 A. Karen Stodter.

22 Q. Anyone else that you recall?

23 A. There was a woman, I don't
24 remember her name, that came from -- you

1 know, was part of Amide, which is another
2 company we bought, but I -- I can't think
3 of her name. She wasn't with us very
4 long.

5 Q. And for Karen Stoedter?

6 A. Stoedter, yeah.

7 Q. Did she stay with Actavis
8 for a period of time, do you -- do you
9 recall?

10 A. She did.

11 Q. Do you know where she is
12 now?

13 A. I believe she retired, but
14 I'm not 100 percent.

15 Q. Okay. Do you recall when?

16 A. I lost track of her after I
17 left Actavis. But I would think, you
18 know, right -- right around that whole
19 transition with Watson buying Actavis,
20 things -- people were -- people were
21 released because there was duplication
22 of -- of duties. So it depended on when
23 that was -- everybody was released at
24 various times. I was kind of on the

1 front-end.

2 Q. Do you understand that you
3 are designated as a custodian of
4 documents to be produced in this case?

5 A. I --

6 Q. Do you know what that means?

7 A. If you would explain it to
8 me please.

9 Q. It basically means that you
10 were designated as a custodian for whom
11 the defendants were producing documents
12 that you had when you -- when you worked
13 at the company.

14 A. Okay.

15 Q. Have you reviewed the
16 documents that were produced from your
17 files in this action?

18 A. I reviewed a lot of
19 documents yesterday.

20 Q. Okay. Roughly how many did
21 you review yesterday, do you know?

22 A. I -- I couldn't fathom.

23 Q. So, a lot?

24 A. Yeah.

1 Q. When you worked at Alpharma
2 and Actavis, did you -- did you have a
3 company cell phone?

4 A. Yes.

5 Q. And did you use that for
6 business purposes?

7 A. Yes.

8 Q. And when you left the
9 company, did you return the cell phone?

10 A. Yes.

11 Q. And did you use text
12 messaging for business purposes?

13 A. I believe so.

14 Q. Do you know whether those
15 text messages have been produced in this
16 action?

17 A. I don't know.

18 Q. Did you see any of them
19 yesterday when you were preparing for the
20 deposition?

21 A. I don't believe so.

22 Q. Did you use any other e-mail
23 accounts other than your Actavis --
24 Actavis e-mail account for business

1 purposes?

2 A. No, ma'am.

3 Q. Did you use any sort of
4 instant messaging accounts or any other
5 types of accounts for business purposes?

6 A. No, ma'am.

7 Q. So just text and your
8 business e-mail, correct?

9 A. Yes.

10 MS. BAIG: Counsel, can you
11 represent whether the text
12 messages have been produced?

13 MR. ROTH: I don't know.

14 MR. LUXTON: I don't know
15 either.

16 MS. BAIG: Okay. Can you
17 please check and ask --

18 MR. ROTH: I can ask
19 people -- well, I don't -- I can't
20 agree to produce, but I can see
21 what we've done and we'll look at
22 the order and see what it says
23 too.

24 BY MS. BAIG:

1 Q. Did you have any -- do you
2 have any business documents from your
3 time at Alpharma, at Actavis, at home?

4 A. No, ma'am.

5 Q. Okay. You didn't take any
6 with you when you left?

7 A. No. No, ma'am.

8 Q. Any other further sources of
9 documents that -- that you can think of?

10 A. At home?

11 Q. Just any other, whether it
12 be electronic or hard copies, are there
13 any other places that you can think of
14 that there might be business-related
15 documents from your time at Alpharma and
16 Actavis?

17 A. No, ma'am.

18 Q. All right. Do you
19 understand that portions of your
20 personnel file have been produced in this
21 action?

22 A. Yes.

23 Q. And did you have an
24 opportunity to review that yesterday?

1 A. I reviewed a lot of
2 documents. I -- I don't know if my
3 personnel files were reviewed. I can't
4 recall that.

5 Q. Okay. Let's take a look at
6 what we have here.

7 (Document marked for
8 identification as Exhibit
9 Allergan-Perfetto-1.)

10 BY MS. BAIG:

11 Q. I'd like to have this
12 document marked as Exhibit 1.

13 A. Can I read this?

14 Q. Yeah. Take a moment to look
15 it over. I'm not going to ask about
16 every line of it, but I'll direct you to
17 certain -- to certain sections of the
18 document as we look through it.

19 A. Okay.

20 Q. Have you seen this document
21 before in the course of your business?

22 A. Yes.

23 Q. And for the record, it
24 begins at Bates Number

1 ALLERGAN_MDL_00682777, and -- oh sorry.
2 Begins at 2776.

3 And it begins as an e-mail
4 from Patty Frisbee to you on April 19,
5 2012.

6 Do you see that?

7 A. Yes.

8 Q. And what is this document?

9 A. It's an Actavis review form.
10 Per4ma review form.

11 Q. Okay. And did you receive
12 these regularly while you worked at
13 Actavis?

14 A. Maybe not this form, but
15 every year I would get reviewed. It may
16 be in a different form depending on the
17 year. Because I was there a long time.

18 Q. And do you recall what
19 Actavis Per4ma was? Was that a program?

20 A. I don't. I think this is
21 just my review.

22 Q. Okay. And was your
23 understanding when you worked at Actavis
24 that your performance was gauged by your

1 ability to meet certain targets?

2 A. Yes.

3 Q. And what was the certain
4 targets that you were required to meet?

5 A. Sales. Sales goals.

6 Q. Can you -- can you talk a
7 little bit about that process, who
8 designed the targets and how they changed
9 over the years?

10 A. Well, the goal of the
11 generic team, which I would be
12 responsible for achieving, would -- would
13 be based on the corporation's goals, and
14 they just would funnel down appropriately
15 to each division.

16 Q. And who provided you with
17 your specific sales targets?

18 A. Doug Boothe.

19 Q. Anybody else?

20 A. It would be Doug.

21 Q. And is it fair to say that
22 your sales targets increased each year
23 for the years that you were at Alpharma
24 and Actavis?

1 A. I'd have to look at each
2 year. We had a year where we had a major
3 recall. So there could be a -- it may
4 not be increasing because we had a major
5 recall, and one of the -- one of the
6 divisions was shut down. So that
7 statement would not be correct.

8 Q. What was the recall -- what
9 was the drug that was recalled?

10 A. It was Amide site.

11 Q. I'm sorry?

12 A. Amide was the company, the
13 division. The whole site was shut down.

14 Q. Was Amide the name of the
15 drug?

16 A. No. Amide was a company
17 that Actavis -- Actavis also bought --

18 Q. Okay.

19 A. -- in New Jersey.

20 Q. Were they responsible for
21 sales and manufacturing of opioids?

22 A. Yes.

23 Q. What opioids, do you know?

24 A. Oxycodone.

1 Q. And when was Amide shut
2 down?

3 A. When I mean shut down. They
4 weren't manufacturing. Let me be clear.
5 They weren't manufacturing product due to
6 a manufacturing compliance issue. I
7 think in -- again, without looking at
8 documentation, I'm thinking around '10.

9 Q. 2010?

10 A. Maybe '10. Maybe '9. I
11 don't know. I would have to look at --
12 you'd have to show me some documents in
13 order to get a specific date.

14 Q. And the product that was
15 recalled, was that oxycodone?

16 A. It was -- there was a lot of
17 products. It wasn't just oxycodone.

18 Q. Any other opioids that you
19 recall?

20 A. Not that I -- there could
21 have been. You know, it was a whole
22 product line.

23 Q. Do you recall the reason
24 that the products were recalled?

1 A. Compliance -- manufacturing
2 compliance.

3 Q. Did it have to do with
4 suspicious order monitoring compliance?

5 A. No.

6 Q. Did it have to do with --
7 what exactly do you mean by manufacturing
8 compliance?

9 A. Well, I'm not a quality
10 person. That statement is kind of a
11 general, from a salesperson. But just
12 how you make sure that we make product a
13 specific way.

14 Q. And it was recalled for just
15 a period of time or it was shut down
16 completely?

17 A. The plant was shut down for
18 approximately a year, I think.

19 Q. So apart from the shutdown
20 of the Amide plant, do you recall that
21 your sales targets generally would
22 increase from a year-to-year basis?

23 A. I believe I had a -- I had a
24 growth target, an increase, yes.

1 Q. And what was your salary, if
2 you recall, roughly, when you began at
3 Alpharma?

4 A. I can't recall.

5 Q. Do you recall -- do you
6 recall what it was when you began at
7 Actavis?

8 A. Not without -- if you showed
9 me HR records, I would. But no.

10 Q. Okay. Do you recall that
11 generally year after year your salary
12 increased?

13 A. Depending on the year and
14 depending if I increased responsibility,
15 it would increase.

16 Q. Okay. But it never went
17 down during the years --

18 A. My salary?

19 Q. During the years that you
20 were at Alpharma and Actavis?

21 A. No, I don't think my salary
22 ever went down.

23 Q. And did you have the
24 opportunity to earn bonuses while you

1 were at Alpharma and Actavis?

2 A. Yes, ma'am.

3 Q. What was the bonus program
4 or structure, what did that look like?

5 A. My bonus plan?

6 Q. Mm-hmm.

7 A. Depends on the year. They
8 changed over the years. So again, you're
9 talking 13 years. It would have to be
10 every year -- not every year. But
11 depending on the year, HR would look at
12 it and make adjustments and update it.

13 Q. And do you recall that
14 roughly what percentage of your salary
15 your bonus would have been?

16 A. Sitting here now, no. But
17 if you show me HR documents, we could
18 figure that percentage out.

19 Q. Do you recall whether or not
20 your bonus was generally more or less
21 than your -- than your salary?

22 A. Sitting here now in 2018, I
23 believe my bonus most years was less than
24 my -- than my salary.

1 Q. And what were the core
2 metrics that went into determining
3 whether or not you were to receive a
4 bonus each year? What is your
5 understanding of the metrics by which you
6 were being evaluated for a bonus each
7 year?

8 A. Again, I'd have to see the
9 plan in order to speak to it.

10 Q. Did you have an
11 understanding that you needed to meet or
12 exceed your sales targets in order to
13 receive a bonus?

14 A. From what I recall, I didn't
15 have to achieve it. I could meet, let's
16 say 75 percent of it and still get a
17 bonus. Again it fluctuated. You're
18 talking 13 years. But I recall there
19 were years -- I didn't have to achieve
20 the number. I could come in at
21 75 percent and get -- and get a bonus.
22 I'm just using reference -- again, you'd
23 have to show me. But I thought it was
24 almost a tiered type thing.

1 Q. Tiered in the sense that the
2 more that you were able to drive sales,
3 the larger bonus you would receive?

4 MR. ROTH: Object to form.

5 THE WITNESS: Can you repeat
6 the question?

7 BY MS. BAIG:

8 Q. When you say tiered, do you
9 mean it in the sense that the more that
10 you were able to drive sales and the
11 closer that you were able to get to your
12 sales targets, the higher the bonus you
13 would receive?

14 MR. ROTH: Objection to
15 form.

16 MR. LUXTON: Same objection.

17 THE WITNESS: No.

18 BY MS. BAIG:

19 Q. So there was -- are you
20 telling me there was no relationship
21 between your driving of sales or
22 increasing of sales and your bonus
23 potential?

24 MR. LUXTON: Objection to

1 form.

2 THE WITNESS: No. I'm
3 telling you that the first
4 question you asked me was, did I
5 have to achieve -- did I have to
6 achieve the target in order to get
7 a bonus. And I'm saying to you
8 that I didn't. I could get
9 lower -- a lower, not make the
10 number, have a pretty good year.
11 Instead of getting an A, I got a B
12 or a C, and I still would get a
13 percent of my bonus, if that
14 explains it better.

15 BY MS. BAIG:

16 Q. Did you understand that
17 driving sales was one of the metrics that
18 was considered for you to receive a
19 bonus?

20 A. Yes.

21 Q. And you understand -- you
22 understood that they were setting
23 ambitious targets?

24 MR. LUXTON: Objection to

1 form.

2 THE WITNESS: They were
3 targets. Ambitious, I can't
4 comment on.

5 BY MS. BAIG:

6 Q. If you take a look at Page 2
7 of the document that's in front of you.
8 If you look at the second paragraph. It
9 states, "In order to meet our ambitious
10 targets we need to build a high
11 performance culture and develop a shared
12 vision of how we do things."

13 A. Is it this page, Miss?

14 MR. LUXTON: Could you just
15 give the Bates number for it.

16 MS. BAIG: Sure. The Bates
17 number is 00682777.

18 THE WITNESS: Okay.

19 BY MS. BAIG:

20 Q. And do you see in the third
21 paragraph that begins, "Actavis is a
22 company that creates value in
23 pharmaceuticals for all its stakeholders,
24 and we all play a very important role in

1 this."

2 Do you see that?

3 A. Second paragraph? Oh, yeah,
4 second paragraph.

5 Q. Depends on whether you count
6 that first sentence as a paragraph.

7 A. Yeah.

8 Q. "In order to meet" -- it
9 goes on. Do you see that? "In order to
10 meet our ambitious targets, we need to
11 build a high performance culture and
12 develop a shared vision of how we do
13 things. Per4ma is about achieving these
14 two aims."

15 Do you see that?

16 A. I do.

17 Q. All right. You understood
18 that there was an expectation that you do
19 your best to meet these ambitious
20 targets, correct?

21 A. I met -- I tried to meet the
22 targets that were provided to me.

23 Q. Okay.

24 A. I didn't write this

1 paragraph.

2 Q. No, I understand that.

3 A. Okay.

4 Q. But you understood that that
5 was something that you were -- you were
6 trying to do, is to meet the targets?

7 A. Yes, ma'am.

8 Q. And in the next paragraph it
9 says, "We are expected to walk the Orange
10 Way."

11 What is "walking the Orange
12 Way," do you know?

13 A. The Orange Way was -- was
14 some broad goals that HR set out as a
15 company of the way -- kind of like the
16 company culture is what I would describe
17 that. I don't remember the details of it
18 though.

19 Q. Do you remember -- remember
20 any aspects of what that Orange Way
21 company culture was?

22 A. If you showed me it, I
23 probably could, but I don't have it.

24 Q. But it says here, "We are

1 expected to walk the Orange Way to
2 deliver on our targets."

3 Do you see that?

4 A. I do.

5 Q. And Per4ma was the system
6 that was to help Actavis tell its people
7 how well they are achieving these goals,
8 do you see that?

9 A. I do.

10 Q. Was that your understanding
11 at the time?

12 A. Yes.

13 Q. And was the single most
14 important aim to increase sales and
15 maximize profit?

16 MR. ROTH: Object to form.

17 MR. LUXTON: Same objection.

18 THE WITNESS: Repeat the
19 question.

20 BY MS. BAIG:

21 Q. Was the single most
22 important aim to increase sales and
23 maximize profit?

24 MR. ROTH: Same objection.

1 THE WITNESS: I -- I mean,
2 my review was based on -- on
3 various metrics. Not just that.

4 BY MS. BAIG:

5 Q. But that was one of the core
6 metrics, would you agree?

7 A. Yeah, I would say.

8 Q. If you turn to the next
9 page. At the top entitled "The Winning
10 Formula." Do you see that?

11 A. Yes.

12 Q. And in the top right there's
13 a reference to \$535 million. Do you see
14 that?

15 A. I do.

16 Q. And was that a sales target
17 that you had for the given year?

18 A. For the generic Rx budget.

19 Q. And the generic Rx budget
20 would be the budget that included the
21 generic opioids that Actavis was selling,
22 correct?

23 A. With -- without looking at
24 sales, because there's a year that we

1 didn't have -- we had the recall. So --
2 so I'd have to look at -- this is -- this
3 is '11. So I'd have to look at a list of
4 our sales that make up the -- how -- how
5 our sales results came back by product in
6 order to answer that question.

7 Q. So you don't recall whether
8 or not Actavis was selling any generic
9 opioids in 2011?

10 A. Not without looking at my --
11 it's been years. I mean '11 is seven
12 years ago. I don't know when -- when
13 the -- when the recall was on the -- on
14 the Amide plant.

15 Q. When though was it -- for
16 the time period for which there was a
17 recall of the Amide plant, did that
18 recall serve to shut down all of generic
19 opioids for Actavis or just a portion of
20 them, do you know?

21 A. Just the ones made at that
22 site. I can't recall what other ones we
23 had at the time.

24 Q. Okay. So the \$535 million

1 sales target, that was the generic
2 prescription drug budget, correct, or
3 the -- or the sales target, correct?

4 A. That was the sales target.

5 Q. And to the extent that
6 those -- that you had generic opioids,
7 those would have been included in that at
8 the time, correct?

9 MR. ROTH: Objection, asked
10 and answered.

11 THE WITNESS: Can you repeat
12 the question?

13 BY MS. BAIG:

14 Q. To the extent that Allergan
15 was -- or Actavis was manufacturing or
16 selling generic opioids, those would have
17 been included in the sales target,
18 correct?

19 MR. ROTH: Object to form.
20 Asked and answered.

21 THE WITNESS: Again, I'd
22 have to see the build-up. I
23 would -- I could answer it clearly
24 if I saw the details of what --

1 and there is -- should be details
2 of what the 535, because that is
3 build-up by product. It would be
4 easier for me to answer that
5 question.

6 BY MS. BAIG:

7 Q. Well, can you think of any
8 other -- any other divisions that would
9 have provided a sales target for generic
10 opioids?

11 A. I don't understand the
12 question.

13 Q. Well, you're saying that the
14 535 million was a sales target for
15 generic drugs, correct?

16 A. That's right. For my team.

17 Q. For your team. Was there
18 any other team dealing with the sales of
19 generic drugs that would have received a
20 sales target for generic drugs?

21 Only your team, correct?
22 You have to answer audibly.

23 A. Yes.

24 Q. So to the extent that we can

1 establish that Actavis was actually
2 selling generic opioids --

3 A. Okay.

4 Q. -- they would have fallen
5 within this sales target of 535 million
6 for this year, correct?

7 A. Yes.

8 Q. Do you see on the left-hand
9 side under midyear comments, it says,
10 "Analysis of the \$100 million to fill
11 voids."

12 Do you have an understanding
13 of what that means?

14 A. In the budget, in the budget
15 there -- there was \$100 million -- there
16 was \$177 million of new products that we
17 didn't get approvals for. That's what --
18 what that means.

19 Q. I see. And it says, "Less
20 Kadian generic (\$33 million)." Do you
21 see that?

22 A. Yeah.

23 Q. What does that mean?

24 A. I'm not -- I'm not sure.

1 I'm not sure how this calculation works
2 at this point.

3 Q. Did you oversee the
4 marketing and sale of Kadian generic?

5 A. Yes.

6 Q. Did you oversee the
7 marketing and sale of the branded Kadian
8 drug, of the branded Kadian drug?

9 A. No.

10 Q. What department would have
11 overseen the marketing and sale of the
12 branded Kadian?

13 A. The -- the branded Rx team
14 at -- at Actavis.

15 Q. And that would have been the
16 team that Jennifer Altier is on; is that
17 correct?

18 A. I don't know that woman.

19 Q. Okay. And do you see on the
20 right-hand side it says, "The generics
21 team is on track to achieve our goal of
22 \$535 million even with the late launch of
23 generic Kadian compared to budget"?

24 Do you see that?

1 A. I do.

2 Q. And was that your
3 understanding at the time?

4 MR. ROTH: Object to form.

5 THE WITNESS: Yes.

6 BY MS. BAIG:

7 Q. And a little further down,
8 it says, "There's a reference to
9 strategic programs in place and the sales
10 team using those strategic programs to
11 increase sales and maximize profit."

12 Do you see that?

13 A. Is it -- where is it?

14 Q. About four lines down, five
15 lines down. If you look at your screen.
16 Have you got it?

17 A. Yeah.

18 Q. What were the strategic
19 programs that were in place to -- that
20 the sales team was utilizing to increase
21 sales and maximize product?

22 MR. ROTH: And I'm sorry,
23 are you looking at the sentence
24 that starts McKesson and ABC?

1 MS. BAIG: Yes.

2 THE WITNESS: It -- it would
3 vary by -- it would vary by
4 customer. We'd have to look at
5 each contract.

6 BY MS. BAIG:

7 Q. What was your sense just in
8 terms of, without providing detail by
9 detail, but the general nature of these
10 types of strategic programs?

11 MR. LUXTON: Objection to
12 form.

13 THE WITNESS: Again, it's
14 too -- it's by customer, what we
15 negotiated by product. We'd have
16 to look at each individual
17 contract.

18 BY MS. BAIG:

19 Q. Would this be -- would it
20 include, for example, volume incentive
21 programs?

22 MR. ROTH: Object to form.

23 THE WITNESS: It could.

24 BY MS. BAIG:

1 Q. And -- and the offering of
2 rebates based on certain thresholds of
3 sales to these customers?

4 A. I -- I don't know without --
5 it's too long ago, and I don't know
6 without looking at specific contracts.

7 Q. Okay.

8 A. Could -- they're -- they're
9 kind of customized to the customer.

10 Q. But these were strategic
11 programs that Actavis was offering to
12 its -- to its distributor customers in
13 order to increase sales and maximize
14 profit, correct?

15 MR. ROTH: Object to form.

16 THE WITNESS: Can you repeat
17 the question?

18 BY MS. BAIG:

19 Q. These were strategic
20 programs that Actavis was offering or had
21 in place with certain of its distributor
22 customers in order to increase sales and
23 maximize profit, correct?

24 MR. ROTH: Object to form.

1 MR. LUXTON: Same objection.

2 THE WITNESS: That was the
3 intent. Sometimes it didn't end
4 that way.

5 BY MS. BAIG:

6 Q. And the sales marketing,
7 about four lines down it says, "The
8 sales, marketing, CS and contract team
9 work together in a professional and
10 productive manner."

11 Do you see that?

12 A. I do.

13 Q. What's the CS team?

14 A. Customer service.

15 Q. And those teams would work
16 together to try to implement these
17 strategic programs with the purpose of
18 increasing sales and maximizing profit,
19 correct?

20 MR. ROTH: Object to form.

21 MR. LUXTON: Object to form.

22 MR. ROTH: Mischaracterizes
23 the document.

24 THE WITNESS: The sales,

1 marketing, and customer service
2 team, contracts team -- I got to
3 hear the question again.

4 BY MS. BAIG:

5 Q. They -- they would work
6 together to try to implement these types
7 of strategic programs in order to, as it
8 says, "increase sales and maximize
9 profit"; is that right?

10 MR. ROTH: Object to form.

11 BY MS. BAIG:

12 Q. Was that your understanding
13 at the time?

14 MR. ROTH: Object to form.
15 Mischaracterizes the document.

16 THE WITNESS: Just -- I
17 can't hear his comment.

18 MR. ROTH: Object to form.
19 Mischaracterizes the document.

20 MS. BAIG: I'm going to
21 object to coaching the witness.

22 MR. ROTH: That's the basis
23 for my objection.

24 MS. BAIG: You can object to

1 form. That's what you're allowed
2 to object to.

3 THE WITNESS: The -- the
4 commercial team worked together
5 to -- to achieve our goals.

6 BY MS. BAIG:

7 Q. And by "commercial team,"
8 are you including sales, marketing,
9 customer service, and contract team?

10 A. Yes.

11 Q. Did they work together to
12 try to implement the strategic programs
13 that you put in place with your
14 customers?

15 MR. ROTH: Object to form.

16 THE WITNESS: Did they -- to
17 various degrees.

18 BY MS. BAIG:

19 Q. And did they work together
20 to use those programs to increase sales
21 and maximize profits?

22 MR. LUXTON: Objection to
23 form.

24 MR. ROTH: Asked and

1 answered twice now.

2 BY MS. BAIG:

3 Q. And I'll direct you to the
4 line. Do you see here where it says,
5 "The team is utilizing these programs to
6 increase sales and maximize profit"?

7 A. Where are you, which
8 paragraph?

9 Q. If you look at your screen,
10 you'll see that.

11 MS. METCALF: The screen is
12 not on.

13 MS. BAIG: Oh, your screen
14 is not working.

15 BY MS. BAIG:

16 Q. So if you look about --

17 MR. ROTH: Zoom it in.

18 THE WITNESS: I can't see
19 it.

20 MR. ROTH: And read the
21 whole sentence in.

22 THE WITNESS: I got it.

23 Okay.

24 BY MS. BAIG:

1 Q. Do you see that it states
2 that, "The sales team is utilizing these
3 programs to increase sales and maximize
4 profits"?

5 Do you see that?

6 A. Yes.

7 Q. And was that your
8 understanding at the time?

9 A. That was our intent.

10 Q. Thank you. What does DB
11 stand for, further down, where it says
12 "DB comments"?

13 A. That's Doug Boothe.

14 Q. And it states here that,
15 "Mike was able to overdeliver versus
16 budget via combination of smart
17 placement, pricing, and product decisions
18 (add Perfetto, and you get all four Ps)."

19 Do you see that?

20 A. I do.

21 Q. And he was praising you for
22 your good work. Is that right, was that
23 your understanding?

24 A. That's what it reads.

1 Thank you. Thank you.

2 Q. Do you see on the next page
3 at the top it says, "Objective fully
4 achieved, 100 percent."

5 A. I do.

6 Q. And so do you take from that
7 you -- that you met your sales -- met
8 your sales target?

9 MR. ROTH: Object to form.

10 BY MS. BAIG:

11 Q. Met or exceeded?

12 A. I believe so.

13 Q. And do you see on the
14 right-hand side where it says completion
15 criteria?

16 A. Yes.

17 Q. And there's a reference to
18 a, "Development of a written manual that
19 details the relevant department
20 functions, responsibilities, and
21 protocols to carry out day-to-day
22 operations."

23 Do you see that?

24 A. I do.

1 Q. Do you recall that that was
2 one of your job responsibilities at the
3 time?

4 A. I don't.

5 Q. Do you recall developing
6 this manual?

7 A. At this time I don't -- I
8 don't recall the manual.

9 Q. So you don't recall what the
10 manual was --

11 A. No.

12 Q. -- about?

13 MR. LUXTON: Objection to
14 form.

15 THE WITNESS: No.

16 BY MS. BAIG:

17 Q. Do you see a little further
18 down under the director of contracts
19 section?

20 A. I do.

21 Q. You were considered a
22 director of contracts at that time?

23 A. I was not.

24 Q. So what is this? This is

1 the director of contracts that's
2 commenting, or what's your understanding
3 of what this is?

4 A. Director of contracts worked
5 for me.

6 Q. I see. So you're letting
7 them know what one of your reports has
8 completed in terms of the SOPs?

9 A. Yes.

10 Q. Okay. And there's a
11 reference there to, "Contract data system
12 are being developed with IT but has not
13 been completed."

14 Do you see that?

15 A. Yes.

16 Q. What was the contract data
17 system?

18 A. From a broad standpoint, it
19 was tracking the accounts with the
20 products we sell to them, with the
21 pricing that -- the contract pricing that
22 we had with the account.

23 Q. Was there another name for
24 the contract data system?

1 A. I don't recall that.

2 Q. And further down, you see
3 that Doug Boothe made another comment
4 that, "Many of these efforts were key
5 enablers behind our strong 2011 results."

6 Do you see that?

7 A. Mm-hmm. I do.

8 Q. Towards the bottom of the
9 page, there's a section entitled
10 "End-of-Year Comments." Do you see that?

11 A. We're still on the same
12 page, right?

13 Q. Yes.

14 A. 2779?

15 Q. Yes.

16 A. Okay.

17 Q. And do you see where it
18 states, "Nancy Baran along with other
19 team members, including me, have been
20 working with an outside consultant to
21 develop an SOM system. The system will
22 enhance our existing program. The system
23 will ensure we are compliant with all DEA
24 regs."

1 Do you see that?

2 A. Mm-hmm.

3 Q. And then it goes on to
4 state, "The SOM system that tracks our
5 inhouse direct orders will be completed
6 by end of year. I am proud of the focus
7 and attention the entire team has given
8 this important project."

9 Do you see that?

10 A. I do.

11 Q. So was it your understanding
12 that the SOM system was -- was to be
13 created by the end of 2011?

14 MR. LUXTON: Objection to
15 form.

16 MR. ROTH: Mischaracterizes
17 the document.

18 MS. BAIG: Well, do you see
19 here -- can you stop coaching the
20 witness, please.

21 BY MS. BAIG:

22 Q. Do you see here where it
23 says, "The SOM system that tracks our
24 inhouse direct orders will be completed

1 by end of year"?

2 A. We had a system. This was
3 enhancing our existing system.

4 Q. Okay. And what was the
5 initial system and how was it enhanced?

6 A. The -- we had initial
7 suspicious order monitoring system. It
8 was enhanced by bringing in experts and
9 also creating a cross-functional team
10 that would improve the system, make it
11 world class.

12 Q. And did you work with an
13 outside consultant to revise the system?

14 A. I believe a few.

15 Q. And do you recall who they
16 were?

17 A. Dendrite, but they changed
18 their name to something else. I don't --
19 I can't recall the name.

20 And then ValueCentric was
21 two of them that I can recall.

22 Q. And do you remember who you
23 worked with at Dendrite?

24 A. I do not.

1 Q. Do you remember who you
2 worked with at ValueCentric?

3 A. I do not.

4 Q. Did you work with those
5 organizations directly?

6 A. I was in meetings. I was
7 not the lead.

8 Q. Who was the lead?

9 A. Nancy Baran would have been
10 the commercial lead working with
11 Dendrite. But again, it was more of a
12 cross-functional team.

13 Q. And what was Nancy Baran's
14 position again?

15 A. She was my director of
16 customer service.

17 Q. Did customer service fall
18 under the marketing division?

19 MR. ROTH: Object to form.

20 THE WITNESS: No. She
21 reported directly to me.

22 BY MS. BAIG:

23 Q. Didn't marketing report to
24 you as well?

1 A. True.

2 Q. So she was reporting to you,
3 but not part of the marketing department,
4 fair?

5 A. She was her own director of
6 customer service with a customer service
7 team that was a -- an own entity
8 reporting to me directly.

9 Q. Was it your understanding at
10 the time that the SOM system that tracks
11 the inhouse direct orders would be
12 completed by the end of 2011?

13 MR. ROTH: Object to form.

14 BY MS. BAIG:

15 Q. Do you see where it says
16 that?

17 A. Can you repeat the question?

18 Q. I'm just tracking the
19 document. Do you see here where I'm
20 pointing?

21 A. I do.

22 Q. Was it your understanding
23 that the SOM system that tracks the
24 inhouse direct orders would be completed

1 by the end of 2011?

2 MR. ROTH: Object to form.

3 Asked and answered.

4 THE WITNESS: The enhanced
5 SOP (sic) system would be. We
6 already had an SOP system. This
7 was an enhanced improved SOP
8 system.

9 BY MS. BAIG:

10 Q. Do you see any reference to
11 the former SOM system on this document?

12 A. I do.

13 Q. Where?

14 A. "The system will enhance our
15 existing system." Last line, first
16 paragraph.

17 Q. And do you have an
18 understanding of when the first system
19 was put into place?

20 A. I do not.

21 Q. How was it that you -- do
22 you have an understanding of what the
23 first system looked like?

24 MR. LUXTON: Objection to

1 form.

2 THE WITNESS: I -- I mean,
3 not sitting here today I do not.

4 BY MS. BAIG:

5 Q. Do you recall how your daily
6 work changed when the SOM system was
7 changed?

8 A. My daily work, my personal
9 daily work did not change.

10 Q. Okay. And by SOM, we're
11 talking about the suspicious order
12 monitoring system, correct?

13 A. Yes.

14 Q. Do you see on the next page,
15 there's a section that starts,
16 "End-of-year comments, Actavis marketing
17 conducted the following."

18 Do you see that?

19 A. I can see it here now. I'm
20 looking up there.

21 Q. Do you see that --

22 A. Put your pen where you are,
23 please.

24 Q. Do you see this?

1 "Oxymorphone, mailings to doctors, e-mail
2 to pharmacist."

3 Do you see that?

4 A. I do.

5 Q. And did you oversee mailings
6 to doctors for purposes of marketing
7 oxymorphone?

8 A. Marketing would have done
9 that.

10 Q. But this is in your -- but
11 marketing reported to you, correct?

12 A. Yes.

13 Q. So did you have oversight
14 with respect to the mailings to doctors
15 regarding oxymorphone?

16 A. Yes.

17 Q. And did you see those
18 mailings to doctors?

19 A. I probably reviewed them
20 before they went out.

21 Q. And do you recall anything
22 about the mailings to doctors with
23 respect to oxymorphone?

24 A. The mailing was to inform

1 doctors and pharmacists that we now had a
2 generic available of that product.

3 Q. And do you recall anything
4 else about the mailings to doctors?

5 A. That was the intent of the
6 mailing, was to inform that there was an
7 alternative generic available on the
8 market.

9 Q. Do you recall anything about
10 the language on those mailings?

11 A. I do not.

12 Q. And do you recall anything
13 about the e-mails to pharmacists with
14 respect to marketing of oxymorphone?

15 MR. LUXTON: Objection to
16 form.

17 THE WITNESS: I do not,
18 without -- without seeing them.

19 BY MS. BAIG:

20 Q. And do you see, further
21 down, so the next line says, "Several
22 customized customer market programs."

23 Do you see that?

24 A. Yes.

1 Q. And what were the customized
2 customer market programs for oxymorphone
3 when you were there?

4 A. Again, I think that's
5 dealing with -- with the broad line,
6 not -- not oxymorphone.

7 Q. Sure. But it would have
8 included oxymorphone, correct?

9 A. Every -- every customer
10 marketing program is customized to the
11 customer and what products we sell to
12 them. So -- so, and the rep, the rep has
13 to develop that with the contracts team.

14 Q. So do you recall any of the
15 customized customer marketing programs
16 that were developed to market
17 oxymorphone?

18 A. I do not.

19 Q. Do you recall any of the
20 customized customer market programs that
21 were developed to market the fentanyl
22 patch?

23 MR. LUXTON: Objection to
24 form.

1 THE WITNESS: I am sure if
2 I -- again, this is going back to,
3 what, '11? I'm sure if I -- if I
4 saw a program where we secured the
5 business with the marketing
6 program, it -- I mean, it's so
7 tailored and so customized, that
8 it's hard for me sitting here now
9 to, to really remember a specific
10 program and whether it got
11 executed and whether it went to
12 fruition. It would be very
13 difficult for me to answer that
14 question.

15 BY MS. BAIG:

16 Q. Do you recall the mailings
17 that Actavis sent out to VA hospitals to
18 increase share for the fentanyl patch?

19 MR. ROTH: Object to form.

20 THE WITNESS: I don't recall
21 that mailing at this time.

22 BY MS. BAIG:

23 Q. Your understanding was that
24 there were such programs, customer market

1 programs for oxymorphone and fentanyl
2 patch when you were there; is that
3 correct?

4 MR. ROTH: Object to form.

5 BY MS. BAIG:

6 Q. Even though you cannot
7 recall the details?

8 A. No. They would be more -- I
9 believe when this is referencing more of
10 a broad portfolio, or whatever the --
11 again it's customized to what the
12 customer was buying.

13 So if the customer wasn't
14 buying oxymorphone or fentanyl, we
15 wouldn't have a -- we wouldn't have a
16 market share program. So it depends on
17 the customer.

18 Q. Sure. Sure. But do you
19 recall that oxymorphone was one of your
20 biggest selling drugs at the time?

21 MR. LUXTON: Objection to
22 form.

23 THE WITNESS: Without
24 looking at my sales data, I

1 couldn't make -- I couldn't -- I
2 didn't --

3 BY MS. BAIG:

4 Q. You don't know the answer to
5 that?

6 MR. LUXTON: Object to form.

7 THE WITNESS: I would if you
8 showed me my sales data.

9 BY MS. BAIG:

10 Q. Okay. Well, let's just
11 assume for purposes of this question that
12 oxymorphone was one of your biggest
13 selling drugs at the time. Do you have
14 any reason to doubt that there were
15 not -- that there were customized
16 customer programs for oxymorphone at the
17 time?

18 MR. LUXTON: Objection to
19 form.

20 THE WITNESS: I think you're
21 asking me to ask a question that
22 makes a lot of assumptions. And
23 I'm under oath, and I don't feel
24 comfortable answering it.

1 BY MS. BAIG:

2 Q. So you recall only that
3 there were customized customer market
4 programs for the products that were being
5 sold, but you don't recall whether there
6 were such programs for oxymorphone. Is
7 that what you're saying?

8 MR. LUXTON: Objection to
9 form.

10 THE WITNESS: What I'm
11 saying is, if a customer was
12 buying a specific item or specific
13 items, because this is a large
14 portfolio, we would develop a
15 program to -- to help them
16 market -- or help them sell the
17 product. We don't really market
18 products.

19 BY MS. BAIG:

20 Q. A market program, right?

21 MR. LUXTON: Objection to
22 form.

23 THE WITNESS: A -- a program
24 to sell the product to their -- to

1 their customers.

2 BY MS. BAIG:

3 Q. Which is referred here on
4 this document as a customized customer
5 market program, correct?

6 A. Yes.

7 Q. Do you know what a sizzle
8 slide is, four lines down?

9 A. Yeah, I do.

10 Q. What is a sizzle slide?

11 A. That's a term I developed
12 for a one-page summary update of the
13 company that, instead of doing a full
14 presentation which -- that the reps could
15 present to customers.

16 Does that make sense?

17 Q. And what type of information
18 would be on the -- the sizzle slide that
19 the reps would present to customers?

20 A. The sizzle slide was updated
21 every quarter, so it varied.

22 Q. Would it be -- include
23 information about specific products?

24 A. Yes.

1 Q. Do you see a little further
2 down it states, "Our customers recognize
3 that Actavis is moving ahead and that we
4 are flexible in finding win-win
5 commercial programs tailored to the
6 specific needs of our customers"?

7 A. Can you put your pencil
8 again, please? Okay.

9 Q. Do you see that?

10 A. Yeah, those would be Doug
11 Boothe's comments.

12 Q. And do you have an
13 understanding of what commercial programs
14 are being referred to here? Are they the
15 same as the customized customer market
16 programs referred to above or is this
17 something different, do you know?

18 A. I would believe it would be
19 similar programs.

20 Q. And do you see the last line
21 where he states, "A super combination of
22 both hunter and farmer, his efforts in
23 team leadership driving outstanding
24 business results"?

1 A. I do.

2 Q. And that's -- that -- that
3 was Doug Boothe's way of praising you for
4 your outstanding -- achieving outstanding
5 business results, correct?

6 MR. LUXTON: Objection to
7 form.

8 THE WITNESS: That's his way
9 of reviewing me.

10 BY MS. BAIG:

11 Q. And is that Doug Boothe's
12 signature on the last page?

13 A. It is. I have it on the
14 right.

15 Q. Yes. I do too.

16 A. Sorry.

17 Q. Do you see just above that
18 it states, "There's a reference to site
19 visits for customers"? I'm pointing to
20 it here.

21 A. It says, "This has allowed
22 me to focus on the customers' needs with
23 more site visits," yes.

24 Q. Okay. And can you tell me

1 about those site visits? What were the
2 site visits being referred to here?

3 A. Well, as a commercial lead I
4 would go in and visit their corporate
5 offices and try to meet with -- network
6 with their senior management. So a lot
7 of meetings at the CVS headquarters, the
8 Walgreens headquarters, the McKesson
9 headquarters, and more commercial focused
10 in -- in networking to make sure we knew
11 all the important players within these
12 major customers.

13 Q. And the purpose of those
14 meetings was -- was to forge
15 relationships with the key players at
16 those customers so that you could drive
17 sales, correct?

18 MR. LUXTON: Object to form.

19 THE WITNESS: My -- my job
20 is -- as a commercial lead is to
21 know my customer. The direct
22 customers, the major direct
23 customers.

24 So -- so I -- it would -- I

1 would go there. The intent is
2 that hopefully if you had a better
3 relationship, you could have more
4 sales.

5 Can we -- can we take a
6 break?

7 MS. BAIG: Absolutely. Any
8 time you need a break just let us
9 know.

10 THE WITNESS: Thank you.

11 THE VIDEOGRAPHER: Remove
12 your microphones. The time is --
13 the time is 10:27 a.m. Going off
14 the record.

15 (Short break.)

16 THE VIDEOGRAPHER: Okay. We
17 are back on the record. The time
18 is 10:46 a.m.

19 BY MS. BAIG:

20 Q. Is it your recollection that
21 you received performance evaluations like
22 these or similar to these -- or similar
23 to this one for each year that you were
24 at Alpharma and Actavis?

1 A. As I sit here today, I think
2 at Actavis, I would say yes. At
3 Alpharma, they -- there was -- depending
4 on the boss, was not the best at reviews.
5 So primarily at Actavis, I would get
6 reviewed every year. It's more
7 formalized.

8 Q. When you left Actavis, did
9 you enter into any sort of severance
10 agreement?

11 A. I believe I had a severance
12 agreement, yes.

13 Q. When was the last time that
14 you reviewed the severance agreement?

15 A. Probably 2012.

16 Q. You understood when you
17 worked at Actavis that opioids were
18 controlled substances, correct?

19 A. Yes.

20 Q. And that they were Schedule
21 II by the DEA, correct?

22 MR. ROTH: Object to form.

23 THE WITNESS: Schedule --
24 Schedule II, right?

1 BY MS. BAIG:

2 Q. Yes.

3 A. Yes.

4 Q. And that they were
5 narcotics, correct?

6 A. Yes.

7 Q. And did you understand that
8 they were Schedule II because they have a
9 high potential for abuse?

10 MR. LUXTON: Object to form.

11 MR. ROTH: Object to form.

12 THE WITNESS: I'm not a
13 doctor. I don't know what the
14 criteria is to -- for DEA to make
15 a selection of a C-II product.

16 BY MS. BAIG:

17 Q. What was your general
18 understanding as to why certain drugs
19 were categorized as Schedule II?

20 MR. LUXTON: Objection to
21 form.

22 THE WITNESS: I don't really
23 have a good understanding, because
24 it varies. Their classification

1 is varied, and it's determined by
2 different -- I've seen drugs that
3 I've questioned that are on the
4 list. So I -- they have a
5 different criteria that I don't
6 really understand their criteria
7 for classification.

8 BY MS. BAIG:

9 Q. Did you understand the
10 difference between Schedule II and
11 Schedule III to be that Schedule II have
12 a higher potential for abuse or
13 diversion?

14 MR. ROTH: Object to form.

15 THE WITNESS: Again, in my
16 mind, I know Schedule II drugs are
17 controlled drugs. I'm not a
18 doctor, so I don't know why -- and
19 I'm not the DEA -- why they were
20 classified as Schedule II.

21 I'm sure that's -- there's a
22 broad reason for that.

23 BY MS. BAIG:

24 Q. So you never had any

1 understanding as the difference -- as to
2 the difference between a Schedule II drug
3 and a Schedule III drug?

4 MR. LUXTON: Objection to
5 form.

6 THE WITNESS: I know a
7 Schedule II drug is a DEA product
8 and requires more documentation
9 than a Schedule III drug.

10 BY MS. BAIG:

11 Q. And did you ever have any
12 layman's understanding as to why that
13 was?

14 A. There's various -- in my
15 mind there's various reasons.

16 Q. What was your understanding
17 of what those reasons were?

18 A. As I sit here today, if they
19 were -- they were sold -- could be sold
20 on the street or something like that.

21 Q. So you understood that
22 Schedule II drugs had a higher potential
23 for abuse, meaning that there was a
24 street -- there could have been a street

1 value for some of them?

2 MR. LUXTON: Objection to
3 form.

4 THE WITNESS: Again, I --
5 the DEA has a classification
6 that -- there's a lot of Schedule
7 II drugs, and I'm sure if we went
8 through it, there would be a
9 reason for each of them being in
10 that classification.

11 BY MS. BAIG:

12 Q. But you never had your own
13 layman's understanding of why certain
14 drugs were Schedule II; is that right?

15 MR. LUXTON: Objection.

16 THE WITNESS: I may have had
17 an understanding, you know, years
18 ago. But the classification is
19 set by the DEA, and I follow --
20 try to follow the rules of the
21 DEA.

22 BY MS. BAIG:

23 Q. But did you know why certain
24 drugs were labeled Schedule II and

1 certain were labeled Schedule III?

2 MR. LUXTON: Same objection.

3 THE WITNESS: I would think
4 that, again, it depends on the
5 drug and what the DEA has
6 determined -- I'm not determining
7 the classification. The DEA has
8 determined the classification. So
9 they would -- they would have a
10 history of these drugs and
11 understand why they should be a
12 Class II or Class III. And I
13 remember that they used to move
14 drugs from classes to classes at
15 times.

16 BY MS. BAIG:

17 Q. So I appreciate that it's
18 the DEA that categorized the drugs and
19 not you, but I'm simply asking whether
20 you ever had any understanding as to the
21 difference between a Class II and a Class
22 III drug. And if you didn't, then the
23 answer's simply no. But I'm asking for
24 your understanding.

1 A. I don't think I have a full
2 understanding of that.

3 Q. You have no -- did you have
4 any understanding of the difference
5 between the Class II and Class III drug?

6 A. Class II drugs, from a
7 commercial standpoint, you -- you have a
8 lot more regulations, ordering, and
9 processing with Class II drugs and the
10 handling of Class II drugs.

11 Q. And did you have any
12 understanding as to why Class II drugs
13 were more heavily regulated?

14 A. It depend -- again, it would
15 depend -- we'd have to look at each drug.

16 Q. So you didn't have any
17 understanding when you worked at Actavis
18 as to why Class II drugs required more
19 paperwork and had more regulation?

20 MR. LUXTON: Objection to
21 form.

22 THE WITNESS: I have an
23 understanding of Class II drugs.
24 And the requirement as the

1 commercial lead that -- that we
2 had different forms that were
3 associated and there was a lot
4 more controls and warehousing.
5 There was a lot more commercial
6 legwork even at the warehouse
7 level. They had to be locked up
8 so that they were -- they were
9 protected.

10 BY MS. BAIG:

11 Q. And was it your
12 understanding at the time that the reason
13 that there was more paperwork and the
14 reason that they had to be locked up, was
15 that they had a higher potential for
16 abuse?

17 A. Again --

18 MR. ROTH: Object to form.
19 Asked and answered.

20 THE WITNESS: -- it would
21 depend on each product. I'm sure
22 the FDA has a reason for each
23 product being in that
24 classification.

1 BY MS. BAIG:

2 Q. It's been asked, but it
3 hasn't been answered.

4 My question is did you have
5 an understanding at the time as to
6 whether the Class II drugs had a higher
7 potential for abuse. And if you didn't,
8 then the answer is no.

9 MR. LUXTON: Objection to
10 form. It -- it has been asked and
11 it has been answered, but --

12 MS. BAIG: I -- it's been
13 asked but not answered.

14 MR. LUXTON: We'll do it one
15 more time, but after --

16 THE WITNESS: Again, I
17 didn't classify -- I -- you're
18 asking me a question that was --
19 there's a lot of C-II products,
20 and each C-II product is in that
21 bucket for various reasons. And I
22 would be making a broad statement
23 that I'm not comfortable with.

24 BY MS. BAIG:

1 Q. Okay. So it was never your
2 understanding that Class II drugs had a
3 higher potential for abuse; is that
4 right?

5 MR. LUXTON: Same objection.

6 MR. ROTH: Mischaracterizes
7 testimony.

8 THE WITNESS: I -- I think I
9 answered the question.

10 BY MS. BAIG:

11 Q. Did you ever have an
12 understanding that Class II drugs had a
13 higher potential for abuse?

14 MR. LUXTON: Asked and
15 answered.

16 BY MS. BAIG:

17 Q. Yes -- it's a yes or no
18 question. It's not --

19 MR. LUXTON: You don't have
20 to answer it yes or no. Asked and
21 answered.

22 BY MS. BAIG:

23 Q. The answer -- the answer is
24 not what the DEA did or what the DEA

1 required. I'm simply asking whether or
2 not you ever had an understanding as
3 to -- as to whether Class II drugs had a
4 higher potential for abuse.

5 Did you ever have that
6 understanding or not?

7 MR. LUXTON: Asked and
8 answered.

9 THE WITNESS: Again, the DEA
10 classifies the products. They are
11 classified in there for various
12 reasons. We'd have to go
13 through -- and -- and I'm sure
14 they -- they give you the -- why
15 they are classified.

16 BY MS. BAIG:

17 Q. I'm not asking for the DEA's
18 understanding. I'm asking for your
19 understanding.

20 Did you ever have an
21 understanding that OxyContin for example,
22 had a high potential for abuse?

23 MR. LUXTON: Objection to
24 form.

1 THE WITNESS: Did I
2 understand? Again, I'm not a
3 doctor to determine abuse so I
4 don't think I can answer that
5 question.

6 BY MS. BAIG:

7 Q. You don't understand the
8 question?

9 A. No.

10 Q. Did you ever have an
11 understanding that there were certain
12 dangers associated with Class II drugs
13 that were not associated with Class III
14 drugs?

15 A. Depending on the product.

16 Q. So you had an understanding
17 of that for some products, but not for
18 others?

19 A. No. It depends on the
20 product, what the -- again, it goes back
21 to why the DEA put the drug in the
22 classification of the -- of the II
23 status.

24 Q. And what's your

1 understanding as to why certain drugs
2 would be classified as Class II as
3 opposed to Class III?

4 A. They're -- they create
5 higher risk, they are at a higher risk --
6 they are high risk products.

7 Q. Higher risk for what?

8 A. Numerous -- again numerous
9 reasons, depending on what the DEA feels
10 that the risk is of the product.

11 Q. Did you have any
12 understanding of the numerous reasons
13 that a product could be categorized as
14 high risk?

15 MR. ROTH: Object to form.

16 THE WITNESS: Not at this --
17 not at this stage of my life.

18 BY MS. BAIG:

19 Q. You don't recall any of
20 those?

21 A. No.

22 Q. Did you understand when you
23 were at Actavis that opioid sales were
24 increasing exponentially nationally?

1 MR. LUXTON: Objection to
2 form.

3 THE WITNESS: Again I'd have
4 to -- I'd have to see my sales
5 figures. And I -- you know, we
6 could look at -- at the trends.

7 BY MS. BAIG:

8 Q. But you don't have any
9 recollection of the fact that opioid
10 sales were increasing substantially
11 during that time?

12 A. They were increasing, I
13 don't think I would use the word -- I --
14 it depends on your reference point of
15 substantially and my reference point of
16 substantially.

17 Q. So you recall only that they
18 were increasing?

19 A. Again, every year is
20 different. We'd have to look at each
21 year and what -- what the increase was.

22 Q. Do you have an understanding
23 as you sit here today that opioid sales
24 increased exponentially nationally during

1 the time that -- that you were in sales
2 at Allergan?

3 MR. ROTH: Object to form.

4 THE WITNESS: I wasn't in
5 sales at Allergan. At Actavis you
6 mean?

7 BY MS. BAIG:

8 Q. At Actavis.

9 A. Our sales increased on --
10 but again I don't -- I don't know what
11 your reference point is.

12 Q. So you've never heard that
13 opioid sales increased exponentially
14 during the time that you were at Actavis
15 on a national basis?

16 A. I -- I hear it now on the
17 news and -- and that.

18 Q. And when was the first time
19 that you became aware of that?

20 A. I don't recall. Probably
21 when I was working at Actavis.

22 Q. And do you recall how you
23 became aware of that?

24 A. No.

1 Q. Did you at some point become
2 aware of an opioid epidemic in the
3 country?

4 MR. ROTH: Object to form.

5 THE WITNESS: I -- I don't
6 remember that term being used by
7 anybody.

8 BY MS. BAIG:

9 Q. You've never heard the term
10 "opioid epidemic" be used on the news or
11 anywhere?

12 A. No, I haven't heard that.

13 Q. Have you ever heard the term
14 "opioid crisis"?

15 A. I have heard that recently.

16 Q. But you didn't hear it when
17 you were working at Actavis?

18 A. I don't believe that term
19 was used when -- when I was -- it's
20 more -- more of a current -- since I've
21 been retired, it's been -- it's been more
22 public.

23 Q. Did you ever have
24 conversations with your colleagues at

1 Actavis about the rise of opioid use
2 generally and the rise of overdose deaths
3 generally?

4 A. I didn't hear what you said.

5 Q. Did you ever have
6 conversations with your colleagues at
7 Actavis about the rise of opioid use
8 generally and the rise of overdose deaths
9 generally?

10 A. I don't believe so.

11 THE VIDEOGRAPHER: Can you
12 raise your microphone up? Okay.
13 Perfect. Thank you.

14 THE WITNESS: Do you want
15 this back?

16 MR. LUXTON: Put it to the
17 side. She'll let you know if she
18 wants you to reference it again.

19 THE WITNESS: Okay.

20 BY MS. BAIG:

21 Q. So you understood that
22 Allergan was required to have a
23 suspicious order monitoring system in
24 place, correct?

1 A. I didn't -- I didn't work
2 for Allergan.

3 Q. Sorry. Actavis.

4 A. Acquired by whom?

5 Q. Do you -- let's backtrack a
6 little.

7 A. Okay.

8 Q. Are you familiar with the
9 Controlled Substances Act?

10 A. As we sit here today I don't
11 have much knowledge of it. But I'm sure
12 back then I had some -- some
13 understanding of it.

14 Q. And you were aware that the
15 manufacture and distribution of opioids
16 must comply with the Controlled
17 Substances Act?

18 A. I mean I'm not a regulatory
19 or compliance person. But I'm sure I got
20 direction that we -- we met the needs of
21 the requirements.

22 Q. Do you recall receiving
23 training on the Controlled Substances
24 Act?

1 A. I could have. I -- I don't
2 recall right now as I sit here today.

3 Q. Did you understand that --
4 that Actavis was a DEA registered
5 manufacturer and distributor for purposes
6 of the Controlled Substances Act?

7 MR. ROTH: Object to form.

8 THE WITNESS: I didn't hear
9 the...

10 BY MS. BAIG:

11 Q. Did you understand that
12 Actavis was a DEA registered manufacturer
13 and distributor for purposes of the
14 Controlled Substances Act?

15 A. I knew we were DEA
16 registered.

17 And what was the second,
18 what was the next part?

19 Q. That's my question --

20 A. Yeah, we were DEA --

21 Q. -- you understood that you
22 were registered?

23 A. Yeah. We were registered.

24 Q. And what was your

1 understanding of Actavis'
2 responsibilities under the Controlled
3 Substances Act, if you had one?

4 A. I -- I couldn't speak to
5 that today. I probably knew it or
6 knew -- had some direction of it from --
7 from our compliance office and our legal
8 team back in 2010. But now I -- I
9 wouldn't -- I'd be -- I'd be guessing.

10 Q. Did you understand that
11 Actavis was required to have a suspicious
12 order monitoring system in place?

13 A. Yes.

14 Q. And did you understand that
15 Actavis was required to identify and halt
16 shipments of suspicious orders to its
17 clients?

18 MR. ROTH: Object to form.

19 THE WITNESS: Can you repeat
20 the question?

21 BY MS. BAIG:

22 Q. And did you understand that
23 Actavis was required to identify and halt
24 shipments of suspicious orders to its

1 clients?

2 MR. ROTH: Object to form.

3 THE WITNESS: We -- we
4 monitored our orders. I don't --
5 again, I can't recall the DEA law.
6 So I think you're making -- I
7 don't want to make the assumption
8 without knowing the DEA law,
9 whether we -- we were required to
10 halt the -- but we did have an
11 SOP -- so -- sorry, SOM system in
12 place.

13 BY MS. BAIG:

14 Q. Were there any other
15 policies or procedures in place at
16 Actavis to comply with the Controlled
17 Substance Act to your knowledge?

18 MR. ROTH: Object to form.

19 MR. LUXTON: Same objection.

20 BY MS. BAIG:

21 Q. Under the SOM process that
22 we talked about?

23 MR. ROTH: Object to form.

24 Lacks foundation, calls for

1 speculation.

2 THE WITNESS: I mean -- I --

3 I don't recall, as I sit here

4 today, the -- what was it called?

5 BY MS. BAIG:

6 Q. Suspicious order monitoring?

7 A. No, the -- the law, the --

8 Q. The Controlled Substances

9 Act?

10 A. Yeah, I don't recall that.

11 I'm sure I had some knowledge of it for

12 sure when I was -- when I was vice

13 president of sales and marketing. But

14 for me to answer that question now, I

15 would have to have a better understanding

16 of that law. Is it a law?

17 Q. I'm just asking you --

18 A. Oh, okay.

19 Q. -- if you're familiar with

20 any other policies and procedures that

21 Actavis had in place to prevent

22 diversion, other than the SOM policies

23 and procedures?

24 MR. ROTH: Objection. Form.

1 Lacks foundation. Calls for
2 speculation.

3 THE WITNESS: Okay. I can't
4 recall sitting here today.

5 BY MS. BAIG:

6 Q. Do you recall whether
7 Actavis outsourced any of its duty to
8 prevent diversion under the Controlled
9 Substance Act --

10 MR. LUXTON: Objection.

11 BY MS. BAIG:

12 Q. -- or to oversee compliance
13 itself?

14 MR. LUXTON: Sorry. My
15 apologies. Objection to form.

16 THE WITNESS: I don't
17 understand what they did, but we
18 used UPS as a -- as a distributor
19 to distribute our products. And
20 they also had a compliance
21 program. That would be the extent
22 of it.

23 BY MS. BAIG:

24 Q. And what was your

1 understanding of UPS's compliance
2 program?

3 A. I don't have a full
4 understanding. I just know that it was
5 another safeguard.

6 Q. Do you have any
7 understanding of UPS's compliance
8 program?

9 A. I do not at this time.

10 Q. Were there any other third
11 parties that you recall that had any
12 involvement with respect to Allergan's
13 efforts, if any, to prevent diversion of
14 controlled substances?

15 MR. ROTH: Object to form.

16 THE WITNESS: It would be
17 Actavis. I'm Actavis. I don't --
18 I want -- because I'm answering
19 the question.

20 BY MS. BAIG:

21 Q. Actavis.

22 A. Sorry. I hope that doesn't
23 offend you.

24 Q. No, it doesn't.

1 MR. ROTH: We need to keep
2 fixing it.

3 THE WITNESS: So when you do
4 that, I get --

5 BY MS. BAIG:

6 Q. Sorry.

7 Were there any other third
8 parties that you recall that had any
9 involvement with respect to Actavis'
10 efforts if any to prevent diversion of
11 controlled substances?

12 A. Well, we had consultants
13 that were helping us enhance the SOP
14 system.

15 Q. And who were those
16 consultants?

17 A. ValueCentric and Dendrite.
18 There may have been more. That's the
19 ones that I can recall.

20 Q. But you don't recall any
21 aspects of what ValueCentric and Dendrite
22 did in that regard, correct?

23 MR. ROTH: Object to form.

24 BY MS. BAIG:

1 Q. Or do you?

2 A. Repeat the question.

3 Q. Do you recall what
4 ValueCentric did to enhance the SOM
5 system, if anything?

6 A. I mean, my staff would have
7 known at the time. I'm sure I was
8 involved in meetings, but at this time
9 it's hard for me to know what those --
10 other than they consulted and advised us
11 on enhancing the suspicious order
12 monitoring.

13 Q. Do you have any further
14 recollection with respect to Dendrite?

15 A. All I can recall is that
16 Dendrite were all ex-DEA people, or the
17 majority of them that came in. So they
18 were very well informed in the DEA sector
19 of the business.

20 Q. And how many of them came
21 in?

22 A. I recall just one or two.

23 Q. Do you remember the names?

24 A. And it's again -- no.

1 Sorry.

2 Q. And do you recall how long
3 they worked with Actavis?

4 A. I do not.

5 Q. Do you remember how many
6 meetings you had with them?

7 A. I do not.

8 Q. What actions did Actavis
9 take if any to seek to prevent diversion
10 of its opioid products?

11 A. When?

12 Q. Ever?

13 A. We had -- we had suspicious
14 order monitoring program.

15 Q. Anything else that you can
16 recall?

17 A. Site visits.

18 Q. Anything else?

19 A. Personal review of orders
20 coming in above and beyond the suspicious
21 order monitoring, communication within
22 the organization, and a cross-functional
23 team working together to ensure that we
24 were -- we were control -- we had a

1 controlled environment for the
2 distribution of these products.

3 I'm sure there's more,
4 but...

5 Q. How did the site visits work
6 to prevent diversion?

7 A. It depends on -- it depends
8 on when we are talking.

9 Q. During your tenure at
10 Actavis.

11 A. Site visit, my site visits
12 are more commercial, so more financial.
13 So different than a site visit by the
14 suspicious order monitoring person would
15 be -- would be -- have a different focus.

16 Q. Were you aware that there
17 were site visits made by the suspicious
18 order monitoring person?

19 A. I believe Nancy Baran --
20 it's hard for me to remember right now.
21 But I believe Nancy Baran and Kelly -- I
22 forget her last name -- of security did
23 make site visits to customers.

24 Q. And do you recall any

1 discussions regarding those site visits?

2 A. Not as I sit here today. I
3 don't remember specific calls on site
4 visits.

5 Q. But your understanding was
6 that the purpose of those site visits was
7 what?

8 A. It depends on who, you know,
9 who's on the call. I mean, if a -- if a
10 finance person is going to make a site
11 visit, he's going to see if the customer
12 is -- has the financial backing to -- you
13 know, we'd go visit somebody to make sure
14 they're financially strong, that they
15 wouldn't -- that they wouldn't stop
16 paying us.

17 And if I went, I would be
18 going to see if they -- if they have a
19 true commercial business, with customer
20 service reps, with sales reps, and
21 they're -- they are a true commercial
22 company. So it depends on who was going
23 to the site visit.

24 Q. Do you have any independent

1 recollection for certain that any SOM
2 person was making site visits?

3 MR. ROTH: Object to form.

4 THE WITNESS: As we sit here
5 today, you know, without showing
6 me some sort of document, I'd be
7 guessing at when and what people
8 were doing at that time.

9 BY MS. BAIG:

10 Q. So is it fair to say that
11 you can't tell me as you sit here today
12 how those site visits by SOM persons, if
13 they existed, actually served to prevent
14 diversion?

15 MR. LUXTON: Objection to
16 form.

17 THE WITNESS: I think you
18 would have to ask the person that
19 actually went on the visit.

20 BY MS. BAIG:

21 Q. If they went on the visit,
22 correct?

23 A. No, I -- again, I'm not
24 making the assumption that they didn't.

1 We'd have to look at documents to ensure
2 and see what the visit was and if there
3 was a document that summarized the visit.

4 Q. As you sit here today,
5 you're not sure one way or another
6 whether any SOM person ever conducted
7 site visits; is that right?

8 A. No, I -- as I sit here
9 today, I would have to say Nancy made
10 visits to accounts to discuss suspicious
11 order monitoring.

12 Do I have a specific -- a
13 specific date, a specific account, a
14 specific person she met with? I can't do
15 that right now.

16 Q. Okay.

17 A. Yeah.

18 Q. But you are sure that she
19 did make some site visits?

20 A. I'm sure she went out and
21 reviewed her suspicious order monitoring
22 enhancements to customers. And to me
23 that's a site visit.

24 Q. So she went out to share

1 Actavis' SOM --

2 A. Yes.

3 Q. -- policy with customers; is
4 that right?

5 A. I'm sure she -- I'm sure she
6 did that. But I don't -- you're asking
7 me who. And I don't -- I don't know who
8 without looking at a document.

9 Q. Okay. In addition to site
10 visits, you mentioned the personal review
11 of orders coming in?

12 A. Yep.

13 Q. And what was your
14 understanding as to how that process
15 worked and whether that process was
16 distinct from the SOM process?

17 A. Well, again, I wasn't in the
18 weeds of the SOM program. But the way I
19 understood it is that the -- the team, I
20 saw enough e-mails over my life that the
21 team, the customer service rep would --
22 what I would use the term, actually look
23 at the order, if she thought it was --
24 was odd, talk to marketing, talk to

1 Nancy.

2 That was -- that was part of
3 the whole process. Also, you had
4 suspicious order monitoring, which is
5 more IT-driven, more system-driven. So
6 there was a hands-on approach as well as
7 a system approach to it.

8 Q. And what was your
9 understanding as to the definition of a
10 suspicious order while you were there in
11 terms of being able to assess whether a
12 particular order was suspicious or not
13 suspicious?

14 MR. LUXTON: Objection to
15 form.

16 MR. ROTH: Object to form.

17 THE WITNESS: I don't think
18 I can answer at this time that
19 without looking at documents. We
20 had an SOP for the SOM
21 specifically outlining this.

22 BY MS. BAIG:

23 Q. Do you recall whether it was
24 based on certain thresholds?

1 A. It had -- it was not linear.
2 It was very diverse. I remember that it
3 was -- had -- it was like an octopus. It
4 had a lot of tentacles.

5 Q. And -- and the department
6 that over -- oversaw SOM was what?

7 A. That was a cross-functional
8 team between Nancy Baran -- because
9 that's where the orders first come in, is
10 in customer service.

11 IT was involved. Legal was
12 involved. Compliance was involved. And
13 marketing was involved. And then this --
14 this Kelly, I -- I don't know her last
15 name. She got involved. Kelly -- she
16 was in security. I don't know what the
17 last name is, sorry.

18 Q. Let's have this document
19 marked as Exhibit 2.

20 (Document marked for
21 identification as Exhibit
22 Allergan-Perfetto-2.)

23 BY MS. BAIG:

24 Q. This document is

1 Bates-stamped ALLERGAN_MDL_02128035
2 through 28036.

3 It starts as an e-mail from
4 Michael Perfetto to Jinping McCormick and
5 Bill Ostrowski dated February 11, 2009.

6 A. I -- I don't think I have
7 the right document.

8 MR. LUXTON: I think -- he's
9 going backwards to see where it
10 starts, and you're starting from
11 the first page of the document.
12 But I think he has it. I think
13 she's just saying --

14 BY MS. BAIG:

15 Q. If you look at the first
16 page?

17 MR. LUXTON: That's where
18 she's referencing.

19 BY MS. BAIG:

20 Q. Do you see it's an e-mail
21 from you to Jinping?

22 A. Yeah, but you said it
23 started. And I -- I went back to where
24 it started.

1 MR. LUXTON: Yeah.

2 BY MS. BAIG:

3 Q. I was looking at the first
4 page.

5 A. So I always go back to see
6 the history --

7 Q. You're right --

8 A. You know, and I --

9 Q. -- the string begins later.
10 But the first page of this
11 document, just for the record, is
12 Allergan 02128035, correct?

13 A. Yes.

14 Q. Okay. And do you recall
15 receiving -- or drafting this e-mail?

16 A. I'm sure I drafted it. It
17 has my name. But I don't recall it.
18 It's 2009. It's 11 years ago.

19 Q. Okay. And do you recall a
20 discussion with Jinping about the initial
21 SOM policy that Actavis had in place?

22 A. I don't recall having a
23 conversation with Jinping in 2009.

24 Q. And looking at that --

1 looking a little further down on the
2 page --

3 A. Can I read -- can I read --

4 Q. Sure.

5 A. -- that -- because I -- I
6 haven't seen this.

7 Q. Go ahead. Take a look at
8 it.

9 A. If I saw it, I saw it
10 11 years ago.

11 Q. Now, I believe you testified
12 that you don't recall or -- or you don't
13 know when the initial SOM procedure was
14 put into place at Actavis; is that right?

15 MR. ROTH: Object to form.

16 Mischaracterizes his prior
17 testimony.

18 BY MS. BAIG:

19 Q. Do you recall?

20 A. I do not recall when it was
21 put into place, the initial program.

22 Q. Okay. And do you recall
23 having discussions at all with Nancy
24 Baran or others regarding the

1 inadequacies of the initial SOM program?

2 A. At this time, I don't recall
3 specific conversations on that subject.

4 Q. And do you see here that
5 Nancy Baran is pointing out, "I explained
6 to her that the DEA suspicious report is
7 not everything people often make it out
8 to be"?

9 A. I see that.

10 Q. Did you have a different
11 understanding of the DEA suspicious
12 report system at the time?

13 MR. ROTH: Object to form.

14 THE WITNESS: As we sit here
15 today, the -- I don't -- I don't
16 recall the suspicious order
17 monitoring system in 2009 and the
18 details of it.

19 BY MS. BAIG:

20 Q. Okay. And do you see she
21 goes on to state with respect to the SOM
22 program, "This is not the mechanism to
23 prevent shipping excess product that one
24 may believe. For starters, the report is

1 not cumulative. For example, if a
2 customer's monthly usage is 3,000 units,
3 they can order 2,999 units everyday of
4 the month and it would not be caught."

5 Do you see that?

6 A. I see it.

7 Q. Do you have any reason to
8 doubt that that's what the program
9 entailed at the time?

10 A. I -- I don't know the
11 details of the actual program in 2009.

12 Q. But you don't have any
13 reason to doubt that what Nancy Baran
14 stated in this e-mail to you at the time
15 is inaccurate; is that right?

16 A. You -- you would have to ask
17 Nancy what she was using as a reference.
18 She -- I think 2009 she is relatively new
19 to the company.

20 Q. And she goes on, "At the
21 same time the percentage of times an
22 order comes up on this report where we
23 would actually stop the order is a
24 fraction of 1 percent."

1 Do you see that?

2 A. Yeah. Again, we'd have -- I
3 didn't write this letter or e-mail. But
4 we'd have to sit with Nancy and see what
5 she used as a reference and see if her
6 comments were accurate. It could be
7 wrong, talk to IT, talk to the
8 cross-functional team at the time.

9 Q. Her comments could be wrong
10 or they could be right, you don't know as
11 you sit here today; is that right?

12 A. I don't know, no.

13 Q. And she goes on to state,
14 "Orders come in all day long over the
15 25 percent threshold."

16 Do you see that?

17 A. Yeah. Again, it's her --
18 her comments. I don't know what she's
19 using as a reference.

20 Q. Do you recall that
21 25 percent was the threshold being used
22 at the time to trigger a suspicious
23 order?

24 A. As I sit here today, no.

1 Q. She goes on to state
2 further, "If we stopped to question and
3 put on hold every one of these orders, it
4 would be crippling. The intent of the
5 DEA suspicious report was designed to
6 prevent excessive shipments of controlled
7 products. In my opinion, it does a lousy
8 job at even that."

9 A. I think she states it's her
10 opinion. This is her opinion. It's
11 not -- again, it's not documented. We'd
12 have to have Nancy here to understand
13 the -- the facts.

14 Q. And do you see a couple
15 paragraphs down, she goes on to state,
16 "The DEA suspicious report is on a long
17 list of items to be addressed. In this
18 case, we really need to start from
19 scratch and have a new report designed
20 that meets our needs as a business."

21 Do you see that?

22 A. I do.

23 Q. And is this -- this is dated
24 2009. Do you know when it was that the

1 new program was implemented?

2 MR. LUXTON: Objection to
3 form.

4 THE WITNESS: As I sit here
5 today, I do not without seeing
6 documents.

7 I might need a two-minute
8 break. Is that all right?

9 MS. BAIG: Sure.

10 THE VIDEOGRAPHER: Let's go
11 off the record. The time is
12 11:26 a.m. Going off the record.

13 (Short break.)

14 THE VIDEOGRAPHER: We are
15 back on the record. The time is
16 11:33 a.m.

17 BY MS. BAIG:

18 Q. So going back for a moment
19 to Exhibit 2. This was an e-mail string
20 from in or about February of 2009,
21 correct?

22 A. Yes.

23 Q. In which Nancy Baran was
24 pointing out, in her opinion, certain

1 inefficiencies in the current SOM system,
2 correct?

3 A. Can you repeat that?

4 Q. In which Nancy Baran was
5 pointing out, in her opinion, certain
6 efficiencies in the current SOM system at
7 Actavis, correct?

8 A. That's what it appears to
9 be.

10 Q. And I think my last question
11 to you was, did you recall when the SOM
12 system was revamped. And you testified
13 that you couldn't recall without seeing
14 documents, correct?

15 A. Right. I know it was
16 enhanced, is the word I would use.

17 Q. Okay. And if you go back to
18 Exhibit 1.

19 A. Okay.

20 Q. On the page Bates-stamped
21 682779.

22 A. Yes.

23 Q. Do you see where it says,
24 "The SOM system that tracks our inhouse

1 direct orders will be completed by end of
2 year"? Right here?

3 A. Yeah.

4 Q. And this document was
5 discussing fiscal year 2011, correct?

6 A. It was, but it says will be.
7 So I'm not sure sitting here today --

8 Q. Does this --

9 A. -- when it was specifically
10 completed.

11 Q. Right. But does this
12 refresh your recollection that it may be
13 that the enhancements to the SOM system
14 wouldn't -- did not take place until
15 2011?

16 MR. ROTH: Object to form.

17 THE WITNESS: Again, I'd
18 have to see. It could have been
19 '12, it could have been '11.

20 I'd have to see when -- when
21 the actual system, or we would
22 have to talk to the
23 cross-functional team.

24 BY MS. BAIG:

1 Q. Do you see at the bottom of
2 the document in front of you, it's dated
3 January 2011?

4 A. I see that.

5 Q. And the sentence within the
6 document states that, "The SOM system
7 that tracks our inhouse direct orders
8 will be completed by the end of the
9 year."

10 So does this refresh your
11 recollection that at least the intent was
12 that the SOM system would be enhanced in
13 2011?

14 MR. ROTH: Object to form.

15 THE WITNESS: Again, it --
16 the intent was it would be
17 enhanced.

18 BY MS. BAIG:

19 Q. In 2011?

20 A. I don't know when it
21 actually was enhanced, what the
22 implementation date.

23 Q. But you can tell from
24 reading this document that it wasn't

1 before January 2011, correct?

2 A. Again, this is -- this is
3 talking about our inhouse direct orders.
4 There's enhancements that were made to
5 the system. There could have been
6 enhancements, without seeing
7 documentation, that were made in '10 or
8 made in '9, the end of '9. We would have
9 to do due diligence in order to -- this
10 is just referencing one sector of the
11 suspicious order -- suspicious order
12 monitoring, sorry.

13 There are -- it's almost
14 like it's a very tangled web with a lot
15 of different aspects.

16 So there could have been
17 other enhancements to the system. Even
18 before I got to Alpharma, there could
19 have been -- so I really can't answer
20 that question without looking at each
21 sector of the -- of the suspicious order
22 monitoring system.

23 Q. But would you agree that
24 this document suggests that at least one

1 set of enhancements were going to take
2 place or were intended to take place in
3 January of 2011?

4 A. I don't know if you can say
5 January 2011. This -- this --

6 Q. In 2011?

7 A. In 2011, okay. That was the
8 intent.

9 Q. And going back to Exhibit 2.

10 A. Yeah.

11 Q. In response to Ms. Baran's
12 comments about the current SOM program,
13 do you see your reply?

14 A. I do.

15 Q. And you stated, "This is an
16 ongoing issue," correct?

17 A. I did.

18 Q. And you did not contradict
19 any of the statements that she made about
20 the then-current SOM program, correct?

21 MR. ROTH: Object to form.

22 BY MS. BAIG:

23 Q. At least not in this e-mail?

24 MR. ROTH: Object to form.

1 THE WITNESS: I'm not sure I
2 even read Nancy e-mail. I may --
3 I think I was -- when I read this,
4 I was more upset about finasteride
5 getting wiped out.

6 BY MS. BAIG:

7 Q. Is there anything in your
8 response to her e-mail that contradicts
9 what she states about the then-current
10 SOM program?

11 MR. ROTH: Object to form.
12 Asked and answered.

13 THE WITNESS: It doesn't
14 even look like I read her e-mail.
15 Again, I think the way my e-mail,
16 when I read it here, I was focused
17 on the wipe-out of a key product.
18 Finasteride was a key product for
19 us. And this product manager
20 allowed it to get -- to get
21 OmniCare to come in and take our
22 inventory.

23 That's -- once I get upset
24 on something, I kind of focus on

1 it.

2 BY MS. BAIG:

3 Q. Your response to her was,
4 "This is an ongoing issue. Nice to have
5 a system to prevent this wipe-out order
6 system (sic)," correct?

7 A. Yes.

8 Q. Are you testifying that you
9 didn't read her e-mail when you received
10 it?

11 A. I don't recall if I read
12 this e-mail in detail.

13 Q. Okay. But you did respond
14 to it, correct?

15 A. I did.

16 Q. Let's have the next document
17 marked as Exhibit 3.

18 (Document marked for
19 identification as Exhibit
20 Allergan-Perfetto-3.)

21 BY MS. BAIG:

22 Q. And this is a document
23 Bates-stamped Acquired_Actavis_00265989
24 through 5995.

1 A. Okay. Can I just read it a
2 little bit?

3 Q. Sure.

4 A. Okay.

5 Q. And did you receive this
6 e-mail in the course of your business at
7 Actavis?

8 A. I probably did. My name is
9 on it.

10 Q. Okay. And it's an e-mail
11 from Rachelle Galant to yourself and
12 others, correct?

13 A. Yes.

14 Q. And it's dated March 17,
15 2011?

16 A. Yes.

17 Q. And it appears to be an
18 e-mail which attaches an SOM protocol,
19 correct?

20 A. That's what it appears to
21 do.

22 Q. And do you see where it
23 states, "Cardinal's ordering on the
24 15-milligram oxy IR tabs is in excess of

1 their rolling six-month average."

2 Do you see that? First
3 line.

4 A. I do see that.

5 Q. Okay. And it goes on to
6 state, "Their six-month average is
7 12,480. Month-to-date, they have been
8 shipped 20,112 bottles. Based on where
9 we are in the month (52 percent), this
10 falls under our SOP of suspicious
11 ordering."

12 Do you see that?

13 A. I do.

14 Q. And is it your understanding
15 that this was an example of an order that
16 was flagged for being excessive under the
17 SOM program?

18 MR. JOHNSON: Object to
19 form.

20 THE WITNESS: I -- you know,
21 as I sit here today, I'm trying to
22 digest this e-mail. I -- I can't
23 recall this specific e-mail and
24 what Nancy -- not Nancy, but

1 Rachelle was getting at.

2 BY MS. BAIG:

3 Q. Sure. But does it appear to
4 you that -- that what's happening here is
5 an example of what we talked about with
6 respect to the SOM program, that an order
7 was flagged for being excessive?

8 MR. JOHNSON: Same
9 objection.

10 THE WITNESS: I don't know.
11 I would have to read -- let me
12 just -- let me just digest this
13 e-mail.

14 To me, and again we'd -- I
15 didn't write the e-mail.

16 It talks about them being
17 behind in ordering in the next
18 line. So I don't know. I -- we'd
19 have to talk to Rachelle and see
20 what her intent was on this
21 e-mail. I'm confused.

22 BY MS. BAIG:

23 Q. Do you see the part that
24 says, "Based on where we are in the month

1 (52 percent), this falls under our SOP of
2 suspicious ordering," do you see that?

3 A. I do see that.

4 Q. Does that suggest to you
5 that this was flagged as part of the SOM
6 process at Actavis?

7 MR. JOHNSON: Object to
8 form.

9 THE WITNESS: I don't know.

10 BY MS. BAIG:

11 Q. The next sentence says, "Can
12 you please contact the customer and
13 inquire as to what the reason is behind
14 the ordering? I know the market is
15 seeing shortages with our competitors.
16 We need documentation to continue
17 shipping Cardinal on the 15 milligrams."

18 Do you see that?

19 A. I do.

20 Q. Was your understanding of
21 the process that if an order was flagged
22 to be excessive, that you would need to
23 go back to the customer and receive
24 documentation as to why the order was

1 higher than usual?

2 MR. JOHNSON: Object to
3 form.

4 THE WITNESS: It was my
5 understanding that the team, as I
6 can see here, were working
7 together, if -- if there was -- if
8 there was excess of ordering,
9 they'd work with the sales rep. I
10 don't know why I got involved,
11 because it's -- Cardinal was not
12 my account. And they would get
13 appropriate documentation to
14 validate. Because we had controls
15 on the selling of this product.

16 BY MS. BAIG:

17 Q. On the selling of oxy, at
18 the 15-milligram level, correct?

19 A. Oxy IR was -- we had -- we
20 had a controlled documented SOP -- SOP --
21 SOM system.

22 Q. And the next paragraph says,
23 "Attached is the SOP for your reference.
24 Please contact me with any questions. If

1 you could target getting back to me
2 within three business days, that would be
3 appreciated. Cardinal's future orders
4 for 15 milligrams oxy IR will not be
5 shipped until we have resolution."

6 Do you see that?

7 A. Yeah, I see it.

8 Q. And so if you switch two
9 pages in, there's a suspicious order
10 report for oxycodone IR tablets. What's
11 your understanding of what this document
12 is?

13 A. My understanding is the
14 team -- internal team and the -- combined
15 with the system worked together to flag
16 the organization, the commercial
17 organization, that their -- we have to
18 contact the customer and understand the
19 market dynamics of their purchases on
20 this product.

21 Q. And the second line on the
22 document states, "Standard operating
23 procedure," correct?

24 A. The second -- the second --

1 MR. LUXTON: It's the very
2 top of the page.

3 BY MS. BAIG:

4 Q. I'm pointing to it.

5 A. Yeah, SOP.

6 Q. Is it your understanding
7 that this was the SOP that was in place
8 at that time?

9 A. I -- I have no knowledge to
10 say differently.

11 Q. That's what you would take
12 from this document, correct?

13 A. Yeah. Yes.

14 Q. Do you see under Number 1
15 where it references monitor monthly
16 customer orders?

17 A. I do.

18 Q. Who was in charge of that,
19 if anyone?

20 A. Based on this document it
21 says marketing product manager.

22 Q. Do you know who that was?

23 A. Depends on the product.

24 Q. So it would -- would have

1 been somebody from the marketing
2 department?

3 A. Yes.

4 Q. And did you see the monthly
5 reports that were generated, if any?

6 A. Sitting here today, I can't
7 remember them. But I could have.

8 Q. And do you recall that they
9 were exported into Excel and stored on
10 the shared marketing file for oxycodone
11 IR suspicious order tracking?

12 A. Where do you read that?

13 Q. Last line of the box with
14 Number 1.

15 A. If that was the SOP, then
16 that's what the team would have done,
17 based on that.

18 Q. And do you recall there
19 being a shared marketing file for
20 oxycodone IR suspicious order tracking?

21 A. If -- if that was the SOP,
22 then there would have been a shared --
23 shared -- because they were a
24 cross-functional team, so they would be

1 sharing information.

2 Q. And would you have had
3 access to that file?

4 A. Yeah. I -- at this point I
5 don't think I recall ever -- ever -- I
6 could have, you know, but at this time I
7 don't remember a drive. It's a drive, is
8 that what they are calling it?

9 Q. Shared marketing file.

10 A. File, okay. I'm sure I --
11 I'm sure at the time I did. But I don't
12 remember as we -- as we say in 2018 here.

13 Q. And do you see, the next
14 box, there's a reference to DC level at
15 the end of the first line. What's DC
16 stand for?

17 A. Distribution level. So
18 distribution center of a -- the
19 customer's distribution center.
20 Warehouse is the way I would define that.

21 Q. And it states, "Compare the
22 month-to-date orders for each customer
23 down to the customer DC level, against
24 the rolling six-month order history."

1 A. Right.

2 Q. "Identify any individual
3 customer locations that have ordered
4 50 percent or greater than their
5 established six-month order average.
6 These customers will be noted in the
7 suspicious order tracking form. See
8 Attachment A."

9 Do you see that?

10 A. I do.

11 Q. Does that refresh your
12 recollection that the threshold for
13 label -- for flagging an order as
14 suspicious was 50 percent or greater than
15 the established six-month order average?

16 MR. ROTH: Object to form.

17 THE WITNESS: It tells me
18 that this is one of the criterias,
19 as I've stated before. The
20 suspicious order monitoring was --
21 was a -- not a linear system.

22 BY MS. BAIG:

23 Q. So one of the criteria was
24 to flag orders that were 50 percent or

1 greater than their established six-month
2 order average, correct?

3 A. That's what it reads here.

4 Q. And is -- who is in charge
5 of doing that? Was that again the
6 marketing product manager?

7 A. Based on this document, it
8 says product manager. So it would be
9 whoever the specific product manager is
10 for the specific product.

11 Q. The marketing product
12 manager?

13 A. Yes.

14 Q. And those customers were
15 then noted in suspicious order tracking
16 forms, like the one at Attachment A. Do
17 you see that?

18 A. I do.

19 Q. And do you recall seeing
20 such forms in your business at Actavis?

21 A. As I sit here today, I don't
22 recall this form, but probably in '11 or
23 '12, I would -- I probably got it.

24 Q. And those forms would have

1 been saved in the shared file, shared
2 marketing file?

3 A. If that's what the SOP said.

4 Q. It says, in Box B, "Forward
5 the suspicious customer order tracking
6 form to the VP of sales and individual
7 sales team account representatives with
8 details of order history and current
9 month-to-date order status," correct?

10 A. Yes.

11 Q. So would that have been you,
12 forward the suspicious customer order
13 tracking forms to the VP of sales, would
14 that have been you at the time?

15 A. I would have been the VP of
16 sales. It also mentions the rep there.

17 Q. Yeah. So it would have been
18 circulated to you and to individual sales
19 team account representatives, correct?

20 A. There would have been
21 communication, yes.

22 Q. The next line says that the
23 action to be taken was to, "Contact
24 customer service and have the open orders

1 for the specific account placed on hold
2 status until the inquiry is completed and
3 resolved."

4 Do you see that?

5 A. I do.

6 Q. And who were the people that
7 were supposed to do the inquiry?

8 A. It would have been the sales
9 team, along with potentially Nancy Baran,
10 potentially -- again, another
11 cross-functional team. Kelly could have
12 been on the call. So initially the rep.
13 If we didn't get sufficient
14 documentation, I would get involved,
15 maybe, with the account. Nancy Baran,
16 Kelly -- I forget Kelly's last name, in
17 security. But again more of a
18 cross-functional team, to understand --
19 understand the suspicious order.

20 Q. The person who's designated
21 as having that responsibility on this
22 chart is the product manager, correct?

23 A. No. No. It --

24 Q. In the right-hand column?

1 A. It says -- you're talking
2 about the customer inquiry, right?

3 Q. I'm just looking at the area
4 of responsibility. Do you see that third
5 column? It says "responsibility"?

6 A. What paragraph are you
7 referencing?

8 Q. B and C?

9 A. Of 3?

10 Q. No. Of 1.

11 A. Oh, we're back to 1.

12 That would be their job to
13 forward the information to myself or the
14 sales rep.

15 Q. Do you see, in the box
16 identified Number 2, it states, "Contact
17 each customer within a target time frame
18 of three business days, who is on the
19 monthly suspicious order tracking
20 form" --

21 A. Right.

22 Q. -- "either by mail, in
23 person or phone regarding the higher
24 volume orders. Note reasons for the

1 order volume and duration that the orders
2 will be increased."

3 Do you see that?

4 A. I do.

5 Q. And did that fall under your
6 responsibility as VP of the sales team?

7 A. It would be my
8 responsibility with my rep that
9 specifically had that account.

10 Q. Okay. And do you recall
11 that? Do you recall that procedure being
12 in place?

13 A. I -- I recall at times
14 calling customers.

15 Q. To ask them why they were --

16 A. Yeah.

17 Q. -- ordering --

18 A. I'm sure.

19 Q. -- a high number of --

20 A. I don't know what
21 specific -- sitting here now in '18. But
22 sure, we -- the best thing is
23 communication, to understand and --
24 understand these situations.

1 Q. And then in documentation
2 follow-up, in Box 3, it says, "Forward
3 all the details of customer
4 communications to the marketing product
5 manager via e-mail within a one-week time
6 frame."

7 Do you see that?

8 A. I do.

9 Q. And in Item C it says, "This
10 file will be stored on marketing shared
11 drive."

12 Do you see that?

13 A. I do.

14 Q. Is it your understanding
15 that all of these -- this documentation
16 follow-up was stored on a marketing
17 shared drive?

18 A. I mean the SOP, they should
19 have followed the SOP. I can't sit here
20 today without looking at the shared drive
21 to tell you if they did it. But the SOP
22 follows -- this was the SOP for the
23 suspicious order monitoring.

24 Q. And Box 4 discusses the

1 decision regarding future customer
2 shipments.

3 Do you see that?

4 A. I see decision regarding
5 future customer shipments, yes.

6 Q. Okay. And the area of
7 responsibility -- the person identified
8 for responsibility for that -- for that
9 box is marketing/customer service/sales
10 team, correct?

11 A. I do see that.

12 Q. And essentially it states,
13 "Based on feedback from the customer,
14 make a determination whether to continue
15 shipping to the customer. The following
16 criteria may be applied to help with the
17 decision: New customer (still
18 establishing six-month history), market
19 growth, market shortage, expansion of
20 customer business (adding new stores and
21 channels)."

22 Do you see that?

23 A. I do.

24 Q. Those were the types of

1 reasons that would justify -- that were
2 being used to justify the shipments of
3 orders that had been flagged as
4 suspiciously high; is that right?

5 MR. LUXTON: Objection to
6 form.

7 THE WITNESS: Those are --
8 those are potential. There could
9 have been -- I don't know. There
10 could have been more reasons.

11 BY MS. BAIG:

12 Q. These are the -- these are
13 some examples of reasons, correct?

14 A. Examples of reasons?
15 Finish.

16 Q. That were used to justify
17 the shipment of orders that had been
18 flagged as suspicious, but based on
19 customer feedback were being shipped
20 anyway?

21 MR. LUXTON: Objection to
22 form.

23 THE WITNESS: I believe that
24 to be so.

1 BY MS. BAIG:

2 Q. And in the next box it
3 states, "If the decision has been made to
4 not ship the customer's open orders,
5 notify customer service to have the
6 orders/accounts placed on suspended
7 status."

8 Do you see that?

9 A. I do.

10 Q. Do you recall -- do you
11 recall certain orders that were
12 identified as suspicious being halted?

13 A. Not sitting here in 2018.
14 But again, this is a -- this was a
15 process that they should have followed.

16 Q. And the next item states,
17 "Notify appropriate personnel with the
18 details of the orders and order history.
19 Keep the open orders and any new orders
20 that come in on the customer location on
21 hold status until clearance is given to
22 resume shipping the customer."

23 Correct?

24 A. Yes.

1 Q. Your understanding from
2 reading this is that all of this would
3 have been documented for any suspicious
4 orders, correct?

5 A. To the best of my knowledge
6 sitting here today.

7 Q. And saved in the shared
8 marketing file?

9 A. Yeah, I presume, based on
10 the suspicious order monitoring -- I mean
11 the SOP.

12 But again, I don't -- I
13 don't know the details of what the actual
14 person was doing.

15 Q. No, understood. We would
16 have to look at the documents to see
17 which ones were flagged as suspicious and
18 which ones were ultimately shipped or not
19 shipped, correct?

20 A. Yep.

21 Q. Let's have this document
22 marked as Exhibit 4.

23 (Document marked for
24 identification as Exhibit

1 Allergan-Perfetto-4.)

2 BY MS. BAIG:

3 Q. It's a document that's
4 Bates-stamped ALLERGAN_MDL_0728129 --
5 sorry -- 72128 and 72129. It begins with
6 an e-mail from Michael Perfetto to Doug
7 Boothe dated April 16, 2011.

8 A. Okay.

9 Q. And do you see in -- on the
10 first page it states, "Umesh put together
11 the summary for us. We can review next
12 week and move on."

13 A. Mm-hmm, yes.

14 Q. Who was Umesh?

15 A. He was IT person that worked
16 for Bill Ostrowski.

17 Q. And who is Bill Ostrowski?

18 A. Head of IT.

19 Q. And do you see the second
20 page is titled "Suspicious Order
21 Monitoring Reporting Summary"?

22 A. I do.

23 Q. And have you had a moment to
24 review the document?

1 A. No. I need to.

2 Q. Okay.

3 A. Okay.

4 Q. Do you -- do you recall
5 receiving this in the regular course of
6 your business?

7 A. I do not.

8 Q. Do you have any reason to
9 doubt that you received it, given that it
10 has your name on it?

11 A. No, I -- based on the
12 computer trail, I had it.

13 Q. Okay. And does this refresh
14 your recollection looking at the first
15 paragraph, that the DEA required
16 registrants who distribute controlled
17 substances to have a mechanism to
18 identify and subsequently report all
19 suspicious orders?

20 A. This is what Umesh wrote. I
21 don't know what he used as a reference.
22 He's an IT guy.

23 Q. But you received this,
24 correct?

1 A. Yes.

2 Q. And do you recall being
3 aware that the DEA had imposed strict
4 sanctions and significant fines on
5 Cardinal, McKesson and AmerisourceBergen
6 and CVS in amounts as high as \$34 million
7 for noncompliance with the Controlled
8 Substance Act?

9 A. I believe I read public
10 documentation on that when it happened.

11 Q. Okay. And do you remember
12 having discussions with colleagues at
13 work about that?

14 A. As I sit here today, it's
15 hard for me to remember conversations in
16 '11. So I can't say yes or no on that
17 really. But I do remember reading --
18 reading newspaper articles on the subject
19 matter.

20 Q. And do you remember that
21 Harvard had had their license temporarily
22 revoked in or about June of 2010?

23 A. No, I can't recall -- I
24 can't recall Harvard Drug.

1 Q. Do you remember whether
2 Harvard was a customer of yours?

3 A. They were a customer, yes.

4 Q. But you don't recall them
5 having their license revoked?

6 A. No, not in 2010.

7 Q. Okay. Do you see the next
8 sentence says, "SOM has become one of the
9 largest hot topics in the eyes of the DEA
10 within the industry right now"?

11 A. I see it.

12 Q. And do you recall that being
13 the case at the time?

14 A. I think, you know, again,
15 there's some -- this is Umesh's opinion
16 of the market being an IT guy. I -- I
17 don't know when I recall that it became a
18 major -- a major point for DEA, what year
19 that was. So I couldn't sit here and
20 tell you that, when that was.

21 Q. You recall that it did at
22 some point; is that right?

23 A. I recall the articles about
24 CVS and Walgreens specifically.

1 Q. Do you recall having
2 meetings with the DEA?

3 A. What was that?

4 Q. Do you recall having any
5 meetings with the DEA?

6 A. I personally never met with
7 the DEA.

8 Q. Okay. Do you recall others
9 from Actavis having meetings with the DEA
10 and briefing you on those meetings?

11 A. I believe -- I believe
12 Michael Clarke had one meeting with the
13 DEA.

14 Q. What do you recall about
15 hearing about that meeting?

16 A. I don't -- I don't recall
17 the details without seeing documentation
18 of what happened at -- you know, I -- I'm
19 not sure -- I'm sure I was briefed. I
20 can't sit here today and give you details
21 on -- on what I was briefed on.

22 Q. Looking at the next sentence
23 of that paragraph. It states, "It has
24 been said that the focus of the DEA has

1 shifted to manufacturers." Do you recall
2 that being the case or being aware of
3 that?

4 A. Again, I think this is
5 Umesh -- I don't know where Umesh got
6 his -- he's an IT guy making a lot of
7 compliance comments. So I -- we'd have
8 to talk to Umesh, where his -- what his
9 reference was.

10 Q. Did Umesh report to you?

11 A. No, he did not.

12 Q. Who did he report to?

13 A. Bill Ostrowski, who was your
14 chief information -- he is an IT guy
15 also.

16 Q. And you don't know who
17 directed Umesh to put this together, if
18 anyone?

19 A. I don't. Umesh didn't work
20 for me. I -- we'd have to ask Umesh.

21 Q. But would it have been his
22 department that flagged orders to be
23 suspicious based on the -- the certain
24 thresholds, the 50 percent threshold?

1 A. IT was part of the
2 cross-functional team that I speak of on
3 suspicious order monitoring. Not his
4 department, but he would have been
5 involved in the IT development of the
6 enhancement program.

7 Q. Okay. And do you see the
8 next sentence says, "Current SOM
9 processes at Actavis are threshold-based
10 and present a risk to Actavis for
11 noncompliance with current standards. As
12 a result this requires us to upgrade to a
13 more statistical-based model."

14 Do you see that?

15 A. I see that.

16 Q. Do you know what risk he was
17 discussing?

18 A. No. I think again he's an
19 IT guy making a lot of compliance
20 comments that are -- that are out of his
21 area of expertise.

22 Q. Do you know whether or not
23 the program was upgraded to a more
24 statistical-based model?

1 A. The program was enhanced
2 to -- in -- in all various ways.

3 Q. But do you know what -- what
4 is meant by this upgrade to a more
5 statistical-based model, what's meant by
6 that?

7 A. I don't know what he meant.

8 Q. Did -- did you have an
9 under -- do you have an understanding of
10 what that means, moving from a
11 threshold-based program to a
12 statistical-based program?

13 A. Well, I -- I don't agree
14 that we just had -- again, he doesn't
15 know enough about our SOM. We didn't
16 have just a threshold-based system. I
17 think I've discussed that before. We had
18 a system that was -- marketing was
19 looking at, customer service was
20 hand-holding orders, catching them. They
21 had the IT system. It was a very -- it
22 was not linear.

23 To me a threshold -- the
24 word threshold means linear. It doesn't

1 include frequency of orders. So --

2 Q. Well, threshold includes
3 frequency of orders, right?

4 A. Not -- not -- it depends on
5 how we define it.

6 Q. Oh, I see.

7 Okay. So, but here he's
8 talking about a shift from a
9 threshold-based model to a
10 statistical-based model, and I'm just
11 trying to understand what that means.
12 If -- if you have a threshold-based
13 model, I understand that. It's what we
14 looked at before, something that if you
15 have 50 percent higher orders in a
16 six-month average.

17 But what is -- what is a
18 statistical-based model? Do you have an
19 understanding of that or no?

20 A. No. I think -- I think
21 that's beyond my understanding of the
22 suspicious order monitoring. I would be
23 guessing. And I'm not prepared to guess
24 under oath.

1 Q. Okay. And you don't recall
2 a shift to a statistical-based model, do
3 you?

4 A. It could have been part of
5 the enhancement, but sitting here today,
6 I -- I would have to look at documents in
7 order -- when is this, when is this?
8 Like '11?

9 Q. This is 2011.

10 A. Oh, okay.

11 Q. This is April 2011. So if
12 you recall, the -- the performance
13 evaluation that's stated that you were
14 going to try to enhance the program was
15 January 2011.

16 A. Right.

17 Q. So this was just a few
18 months after --

19 A. Right.

20 Q. -- and I would imagine part
21 of the enhancement, would you agree, or
22 part of the effort to enhance?

23 A. If I recall the -- the
24 review, which we reviewed, it was the

1 direct order portion that was being
2 enhanced at that time.

3 As I stated before, it was
4 enhanced in various other ways. I don't
5 know what the timing of that is.

6 Q. Does this e-mail suggest to
7 you that in or about April 2011 they were
8 looking at another way to potentially
9 enhance the program?

10 A. Again, I think -- I think
11 that this is an ongoing process to
12 enhance the program.

13 Q. And it -- it appears, a few
14 lines down, it states, "We concluded that
15 a third-party expert would help us
16 minimize the risk."

17 Do you see that?

18 A. I do.

19 Q. And is that likely the same
20 person that you referred to earlier as --
21 as being, I think you -- you suggested
22 that there were two organizations that
23 were hired to help in this regard, or was
24 this somebody different, do you know?

1 A. Dendrite is -- renamed
2 themselves, this -- you get it --

3 MR. LUXTON: Cegedim.

4 THE WITNESS: Cegedim?

5 BY MS. BAIG:

6 Q. Okay. Cegedim Compliance
7 Solutions?

8 A. I actually like Dendrite
9 better.

10 Q. I do too.

11 A. Yes.

12 Q. And then there's a
13 cross-benefit analysis. Do you see that?

14 A. Yes.

15 Q. Associated with moving to a
16 statistical model?

17 A. Yes.

18 Q. Says T&E, do you know what
19 T&E is?

20 A. Travel and -- travel and
21 expenses I think.

22 Q. And do you see the fourth
23 arrow under cost benefit? References
24 increased customer confidence, selling

1 point. Do you see that?

2 A. Yes.

3 Q. Was the SOM program used as
4 a marketing tool with -- with your
5 customers to increase their confidence?

6 A. I -- I don't -- I don't
7 recall the sales team doing that.

8 Q. Do you recall anybody doing
9 that?

10 A. I mean it's -- it was -- it
11 was the right thing to do to enhance a
12 suspicious order monitoring.

13 I can't recall us going out,
14 the sales team -- the way this reads is a
15 selling point. I don't see the -- the
16 suspicious order monitoring being a
17 selling point.

18 Q. But the document suggests it
19 could have been, correct?

20 A. Right. But this is an IT
21 guy that's talking out of -- in my
22 opinion, way out of his league with --
23 with a lot of different areas.

24 Q. So you -- you took this

1 document from him and forwarded it on to
2 Doug Boothe, correct?

3 A. I did.

4 Q. And to Bill Ostrowski,
5 correct?

6 A. Yes.

7 MS. BAIG: Let's have this
8 document marked as Exhibit 5.

9 (Document marked for
10 identification as Exhibit
11 Allergan-Perfetto-5.)

12 BY MS. BAIG:

13 Q. This document begins as an
14 e-mail from you to Kelly Smith and
15 others.

16 A. Oh, that's --

17 Q. Is that the Kelly you were
18 referring to earlier? We've got her.

19 Okay. It's Bates-stamped
20 Acquired_Actavis_01317298 to 01317299.

21 A. Okay.

22 Q. And the subject line is
23 "Meeting today regarding QK healthcare
24 oxy ordering pattern."

1 Do you see that?

2 A. I do.

3 Q. And is this the Kelly that
4 you referred to earlier?

5 A. Yes.

6 Q. And what was her position
7 again?

8 A. Some sort of security. Like
9 director of security, maybe.

10 Q. What does QK stand for?

11 A. Quality King.

12 Q. Quality what?

13 A. Quality King.

14 Q. Is that a customer?

15 A. It is.

16 Q. Do you see at the bottom of
17 the first page, in an e-mail from Kelly
18 Smith to you and Rachelle Galant and
19 others, she states, in the last
20 paragraph, "Mike, per our class
21 discussion, you hired a vendor to develop
22 an enhanced suspicious order program.
23 Are they on board right now?"

24 Do you see that?

1 A. Yes.

2 Q. And up above he states in
3 response, "Yes, we have engaged Dendrite
4 and have an internal team that I'd like
5 you to be involved with."

6 Do you see that?

7 A. I do.

8 Q. Does that refresh your
9 recollection that Dendrite may have been
10 hired in or about early 2011?

11 A. They may have been hired in
12 '10. I -- I don't -- they are hired as
13 of this date.

14 Q. Okay. And Kelly Smith goes
15 on in that last paragraph: "Further, I
16 believe that before we bring these
17 companies on board, we should do
18 increased due diligence. Sales and
19 marketing may not be the best outlet for
20 this."

21 A. Okay.

22 Q. Do you recall discussions
23 about sales and marketing potentially not
24 being the best outlet for SOM due

1 diligence?

2 A. I do not at this time.

3 Q. Do you have an understanding
4 as to why that might be?

5 MR. ROTH: Object to the
6 form.

7 THE WITNESS: No, we'd have
8 to ask Kelly that. Kelly was, I
9 believe, relatively new when
10 this -- in this -- in this role.

11 BY MS. BAIG:

12 Q. So as you sit here today,
13 you don't have any understanding that
14 sales and marketing might not be the best
15 team to perform SOM procedures merely by
16 virtue of the fact that sales employees'
17 compensation is typically based on
18 driving and increasing sales?

19 MR. LUXTON: Objection to
20 form.

21 BY MS. BAIG:

22 Q. Does that suggest there's a
23 tension to you, or no?

24 A. I think you're -- the

1 marketing/customer service team, along
2 with compliance, along with legal, was a
3 cross-functional team along with IT. It
4 wasn't -- it wasn't just the sales team.
5 Okay.

6 Q. Sure, but she's suggesting
7 here that sales and marketing may not be
8 the best outlet for this. And I'm just
9 asking if you have an understanding as to
10 why that might be or not.

11 A. We would have to ask Kelly.

12 Q. I know. But I'm asking for
13 your understanding.

14 A. To me --

15 Q. Maybe you don't have one.

16 A. I don't have -- I don't have
17 the opinion on that.

18 Q. Okay. She goes on to state,
19 "Perhaps security and legal should be
20 involved."

21 Do you see that?

22 A. I do.

23 Q. And she goes on to state,
24 "As you know, many illegitimate companies

1 are looking for new suppliers due to
2 recent DEA scrutiny and close of previous
3 suppliers due to these sort of problems."

4 Do you see that?

5 A. I do.

6 Q. And the subject line is "The
7 Healthcare Oxy Ordering Pattern."
8 Correct?

9 A. Yep.

10 Q. Do you recall that there
11 were a number of illegitimate companies
12 that were looking for new suppliers due
13 to the recent DEA scrutiny?

14 MR. ROTH: Object to form.

15 THE WITNESS: As we sit here
16 in 2018, I do not. But if you
17 showed me documentation, I
18 probably could answer.

19 BY MS. BAIG:

20 Q. Well, based on this
21 document, does that suggest to you that
22 that was the case?

23 MR. LUXTON: Objection to
24 form.

1 THE WITNESS: No.

2 BY MS. BAIG:

3 Q. So you don't agree with what
4 Kelly Smith is stating here?

5 A. I don't know if she's
6 referencing us or referencing the
7 industry.

8 Q. Well, no, I'm merely asking
9 if you had an understanding of what she's
10 stating here, which is, "As you know,
11 many illegitimate companies are looking
12 for new suppliers due to recent DEA
13 scrutiny and closure of previous
14 suppliers due to these sorts of
15 problems."

16 Did you have an
17 understanding generally that that was
18 going on in the industry?

19 A. As we sit here today, I
20 could have. I don't remember.

21 I need to take another break
22 once you're done with questioning on
23 this.

24 Q. Can we just finish this one

1 document?

2 A. Yeah.

3 Q. Probably done in a couple
4 minutes. Is that good?

5 A. That's good.

6 Q. In your opinion -- strike
7 that.

8 MS. BAIG: Okay. Done with
9 that document.

10 THE WITNESS: Thank you.

11 THE VIDEOGRAPHER: Please
12 remove your microphones. The time
13 is 12:20 p.m. Going off the
14 record.

15 - - -

16 (Lunch break.)

17 - - -

18 A F T E R N O O N S E S S I O N

19 THE VIDEOGRAPHER: We are
20 back on the record. The time is
21 1:19 p.m.

22 - - -

23 EXAMINATION (Cont'd.)

24 - - -

1 MS. BAIG: Okay. So let's
2 have this document marked as
3 Exhibit 6.

4 (Document marked for
5 identification as Exhibit
6 Allergan-Perfetto-6.)

7 BY MS. BAIG:

8 Q. This is a document
9 Bates-stamped ALLERGAN_MDL_07167006, and
10 it's one page. And it's an e-mail from
11 Bill Ostrowski to you and others, dated
12 October 21, 2011.

13 Just take a moment to look
14 at it.

15 Do you recall some
16 discussion -- or let's back up for a
17 moment. I think you had made a
18 distinction when talking about the
19 enhancing of the suspicious order
20 monitoring program that was referenced in
21 your performance evaluation, about that
22 enhancement being limited to direct
23 customers; is that right?

24 MR. ROTH: Object to form.

1 BY MS. BAIG:

2 Q. Do you remember talking
3 about the enhancement to suspicious order
4 monitoring in your performance
5 evaluation?

6 A. Yes.

7 Q. And I think a couple of
8 times on the record, you -- you
9 referenced that that was specific to
10 direct customers; is that right?

11 A. That's what I read in the
12 review at -- today. That's why I
13 referenced it.

14 Q. Correct. And I just wanted
15 to ask, you know, do you have an
16 understanding of a separate enhancement
17 that was made with respect to indirect
18 customer --

19 MR. ROTH: Object to form.

20 BY MS. BAIG:

21 Q. -- and suspicious order
22 monitoring?

23 A. As I stated before, there --
24 there were various enhancements. There

1 was additional enhancements on indirect
2 customers.

3 Q. Okay. And what is your
4 understanding as to the enhancements that
5 were made with respect to suspicious
6 order monitoring and indirect customers?

7 A. I believe they -- it was --
8 it was more of an IT system development
9 working with an outside firm, I don't
10 know who the outside firm was, to
11 develop -- or to -- to enhance the
12 indirect system.

13 Q. And by indirect system, we
14 mean -- we mean to enhance suspicious
15 order monitoring of your customers'
16 customers; is that right?

17 A. As I sit here today, I --
18 that seems right.

19 Q. Okay. And you see in this
20 e-mail from Bill Ostrowski from October
21 of 2011?

22 A. Right.

23 Q. He's stating that "Mike and
24 I spoke today about the game plan for

1 suspicious order monitoring, so just
2 wanted to summarize some key points and
3 also sync up on budgeting," right?

4 A. Yep.

5 Q. And then he goes on to state
6 that "we had initially agreed that
7 monitoring direct orders are the
8 priority. It seems indirects are equally
9 important and we need to move on both
10 fronts in parallel."

11 Do you -- do you see that?

12 A. Yes.

13 Q. Does this suggest to you
14 that the enhancement for the indirect
15 aspect of the suspicious order monitoring
16 program was taking place in or about
17 October of 2011?

18 A. It was -- it was being
19 enhanced or discussed at that time.

20 Q. And he's talking about
21 syncing up on the requirements. Do you
22 see that?

23 A. Yes.

24 Q. And then he goes on to state

1 certain aspects of that proposed
2 enhancement or enhancement. And he
3 states, "Determine criteria for
4 activities that constitute suspicious
5 indirect orders/customers."

6 Do you see that?

7 A. Yes.

8 Q. Do you know -- know whether
9 those criteria for indirect customers and
10 suspicious order monitoring were -- were
11 created or determined at that time?

12 A. I don't know.

13 Q. Do you know what the
14 criteria were?

15 A. Not looking at this
16 document.

17 Q. And you don't have an
18 independent recollection of that?

19 A. No.

20 Q. Okay. He goes on to state,
21 "Determine the data that is most suitable
22 to flag suspicion as per first bullet."

23 There's a reference to
24 chargebacks, 844, or sales out from

1 wholesalers, 867?

2 A. Yep.

3 Q. And then he goes on to
4 state, "Neither is 100 percent complete
5 so need to assess tradeoffs and take a
6 position. Other data required."

7 Do you see that?

8 A. Yep.

9 Q. What's your understanding
10 of -- of what this means as you read it
11 now?

12 A. I know what chargebacks are.
13 I don't know what 867 data is. I
14 don't -- I don't know what his
15 language -- I didn't write this. I don't
16 know what his language -- neither hundred
17 percent -- neither is 100 percent
18 complete -- I don't know what he was
19 referencing there about a tradeoff.

20 Q. Okay. But you understand
21 that he was trying to determine what data
22 was most suitable to flag suspicious
23 orders, correct?

24 A. He was -- he's an IT guy.

1 So he was trying to figure out with the
2 enhancement program, what path he would
3 take.

4 Q. In order to flag suspicious
5 orders for indirect customers, correct?

6 A. In order to enhance our --
7 our suspicious order monitoring system.

8 Q. Do you see the second bullet
9 where it says determine the data that is
10 most suitable to flag suspicion?

11 A. I do.

12 Q. Does that suggest to you
13 that he was trying to figure out which
14 data to use to flag suspicious orders for
15 indirect customers?

16 A. Again, it's almost slang. I
17 don't know what he -- he means by that.

18 Q. And it suggests that you
19 were working with Dendrite in the last
20 sentence. Do you see that?

21 A. Yeah, I -- to me this looks
22 like he's -- he's trying to get his
23 budget in place to support the
24 enhancement.

1 Q. We'll have the next document
2 marked as Exhibit 7.

3 (Document marked for
4 identification as Exhibit
5 Allergan-Perfetto-7.)

6 BY MS. BAIG:

7 Q. This is a document
8 Bates-stamped ALLERGAN_MDL_02459892
9 through 9895. It begins as an e-mail
10 from you to Jinping McCormick and
11 Rachelle Galant dated February 14, 2012.

12 A. Okay.

13 Q. Do you recall there being a
14 procedure in place whereby orders were
15 first flagged as being ordered -- orders
16 of interest and then flagged as being
17 suspicious orders?

18 A. Can I just go back to the
19 beginning of this, and see what's --
20 what's going on?

21 Q. Sure.

22 A. Because I haven't seen it in
23 six years.

24 Q. Understood.

1 A. Okay.

2 Q. Do you recall there being a
3 tiered level of suspicious orders perhaps
4 one first being orders flagged as being
5 orders of interest before they were
6 flagged as being suspicious orders?

7 A. I don't recall that as, you
8 know, as I'm sitting here now, I don't.

9 Q. Okay. Do you have -- if you
10 look at the second-to-last page at the
11 bottom, it's an e-mail from you to Ara
12 Aprahamian.

13 A. Yep.

14 Q. And he was the director of
15 pricing and contracts, correct?

16 A. He was, yep.

17 Q. And you say, "This is my
18 first shot at this."

19 A. Yep.

20 Q. The first bullet is,
21 "Utilize the ValueTrak system, Safe and
22 Secure system." Is that a system for SOM
23 that was devised by ValueTrak, the
24 organization that you mentioned earlier?

1 A. Yes. To the best of my
2 knowledge as I sit here today, yes.

3 Q. Okay. Do you have any
4 recollection of what that system was?

5 A. No, unless you show me some
6 more documentation. Maybe I can refresh
7 myself.

8 Q. And you see the next bullet
9 says, "Focus on products of interest."

10 A. Okay.

11 Q. Do you have an understanding
12 of what products were of interest?

13 A. No. I think this is just --
14 if I read this, in the way I wrote this,
15 it was kind of a framework, initial idea
16 of some process that I wanted to put
17 together.

18 Q. Okay. Do you know whether a
19 process like this was put together?

20 A. I don't know.

21 Q. Do you see the last bullet
22 refers to, "Calls with top wholesalers to
23 review retail customers of interest"?

24 A. Okay.

1 Q. Do you have an understanding
2 of whether a process like that was ever
3 put into place or not?

4 A. I don't know but again this
5 looks like -- "this is my first shot at
6 this" means that I'm just throwing ideas
7 on a piece of paper.

8 Q. Okay. And do you see in
9 response, there's an e-mail from Ara
10 Aprahamian sent to you --

11 A. Yep.

12 Q. -- entitled -- with the
13 subject line "Safe and Secure"?

14 A. Yes.

15 Q. And this is February 10,
16 2012, correct?

17 A. Yes.

18 Q. And he says, "MP, think it
19 gets us started. Here are some
20 suggestions/changes."

21 MP is Mike Perfetto, right?

22 A. That's me.

23 Q. Okay. And he writes,
24 "Develop written SOPs to govern the

1 functions and scope of suspicious order
2 monitoring."

3 Do you see that?

4 A. Yep.

5 Q. Do you understand from this,
6 that he was suggesting that the company
7 develop written SOPs to govern the
8 functions and scope of suspicious order
9 monitoring?

10 A. I -- I don't know what --
11 what -- the subject matter has me
12 confused, Safe and Secure. So I'm not
13 sure -- I'm not sure where -- what he was
14 referencing.

15 Again, these e-mails are not
16 as crystal clear right now.

17 Q. If you go back to the very
18 first e-mail from you to him with the
19 subject line "Safe and Secure"?

20 A. Yeah.

21 Q. Do you see in the first
22 bullet point it says, "Utilize the
23 ValueTrak system," and then in parens it
24 says "Safe and Secure system"?

1 A. Okay.

2 Q. Does that suggest to you
3 that the Safe and Secure system was the
4 SOM system that was -- that was provided
5 by the ValueTrak system?

6 A. It appears that way.

7 Q. And so then, on February 10,
8 2012, Ara Aprahamian is suggesting that
9 the company develop written SOPs to
10 govern the functions and scope of
11 suspicious order monitoring, correct?

12 A. What he's suggesting.

13 Q. Yes. Is that right?

14 A. He's suggesting changes.
15 "Here are some suggestions/changes to the
16 SOP."

17 Q. Mm-hmm. And the first one
18 says, "Develop written SOPs to govern the
19 functions and scope of suspicious order
20 monitoring, correct?

21 A. He did.

22 Q. And then it goes on to
23 state -- it goes on to break out two
24 categories. One is on direct orders.

1 A. Yes.

2 Q. And the other is on retail
3 level, which means customers' customers,
4 correct?

5 A. Yes.

6 Q. Okay. So for the direct
7 orders, he's suggesting that the company
8 use Cegedim-developed SOM model to flag
9 orders of interest daily. Do you see
10 that?

11 A. Yes.

12 Q. Do you know whether that was
13 ever implemented?

14 A. I'm sure it was part of the
15 enhancement program. I don't know when
16 it was implemented, but I'm sure it was
17 part of the enhancement program.

18 Q. And do you know who
19 implemented it?

20 A. The enhancement team, the
21 cross-functional team that I've been
22 discussing.

23 Q. Okay. And did you see the
24 orders flagged?

1 MR. ROTH: Object to form.

2 THE WITNESS: As I sit here
3 today, you know, I can't recall if
4 somebody came to me when they
5 flagged orders.

6 BY MS. BAIG:

7 Q. And but you see that it
8 says, it refers to flagging orders of
9 interest and not necessarily flagging
10 suspicious orders.

11 Do you see that?

12 A. Go ahead, repeat that again.

13 Q. Do you see that Bullet Point
14 1 says -- references flagging orders of
15 interest?

16 A. Okay.

17 Q. It doesn't reference
18 flagging suspicious orders. And I'm just
19 wondering if you know the difference
20 between an order of interest and a
21 suspicious order?

22 A. I don't. We'd have to ask
23 Ara what he was -- what he was trying to
24 do with this e-mail.

1 Q. He goes on to suggest that
2 it be implemented that the company
3 investigate order of interest with input
4 from commercial team, document the
5 investigation and decision.

6 A. Okay.

7 Q. Right?

8 A. I read that.

9 Q. And he goes on to suggest
10 the company communicate with customer
11 service on order decision.

12 Do you see that?

13 A. I do.

14 Q. And then the fourth one
15 states, "Established letters/e-mails sent
16 to wholesalers and chains informing them
17 of our findings of order of interests (if
18 deemed suspicious)" --

19 A. Okay.

20 Q. -- "and/or limits of
21 quantities - compliance and marketing."

22 A. Okay.

23 Q. And then in parentheses it
24 says, "Established quantities only."

1 Do you see that?

2 A. Yes.

3 Q. So again, there's that
4 distinction between orders of interest
5 and suspicious orders, but you're not
6 sure what that means, correct?

7 A. No.

8 Q. Okay.

9 A. That would be hard for me to
10 answer that question.

11 Q. And then it goes on to the
12 second category, which is the retail
13 level, customers' customers, right?

14 A. Yep.

15 Q. And your understanding is
16 he's proposing SOM measures be
17 implemented for your customers'
18 customers, right?

19 A. Yep.

20 Q. And he's suggesting that you
21 utilize ValuTrak's Safe and Secure model.

22 Do you see that?

23 A. I do.

24 Q. And he also references a

1 daily analysis or focus on products of
2 interest and that that analysis might be
3 done by the compliance group.

4 Do you see that?

5 A. I do.

6 Q. You don't know whether that
7 was ever implemented or not, though; is
8 that right?

9 A. Again, we would have to look
10 at documents like the SOP to see -- this
11 is his suggestions, and see if some of
12 these suggestions were approved and
13 implemented by the cross-functional team.

14 Q. And do you see, if you go
15 down towards the end of the page, the
16 second-to-last paragraph. He states,
17 "SOPs will need to be developed. No big
18 thing. Can be early or as we go along,
19 but must have everything documented."

20 Do you see that?

21 A. I do.

22 Q. All right. So do you
23 understand from that, that in or about
24 February 2012, he was proposing that SOPs

1 be developed?

2 A. I agree.

3 (Document marked for
4 identification as Exhibit
5 Allergan-Perfetto-8.)

6 BY MS. BAIG:

7 Q. We'll have this document
8 marked as Exhibit 8. And it's a document
9 that's Bates-stamped Allergan
10 ALLERGAN_MDL_02150276 through 2150293.
11 And it begins as an e-mail from you to
12 Doug Boothe dated March 31st, 2012.

13 Do you see that?

14 A. Yeah.

15 Q. And just take a moment to
16 page through it.

17 A. Okay.

18 Q. And do you see that it
19 starts as an e-mail chain, and then
20 there's a customer questionnaire form.
21 And then there appears to be a draft of
22 "Actavis suspicious order monitoring
23 indirect customer sales SOP."

24 Do you see that?

1 A. What page?

2 Q. For the SOP, it's 02150289.

3 A. Okay.

4 Q. And so you see the draft
5 SOP, correct?

6 A. Yep.

7 Q. And the customer
8 questionnaire form, do you see that at
9 2150281?

10 A. I see it.

11 Q. And it appears from the
12 e-mail chain, does it not, that there was
13 an SOM meeting on March 28th -- sorry, on
14 March -- well, in March of 2012?

15 A. It appears that this is a
16 part of the -- the improvement of the
17 SOP -- SOM process.

18 Q. This was -- this was a
19 meeting that was held to that end; is
20 that right?

21 A. Yes.

22 Q. Okay. And were you present
23 at the meeting?

24 A. I don't recall.

1 Q. Okay.

2 A. Does -- does it say I was
3 present?

4 Q. Actually, if you look
5 halfway down on the first page, it says
6 in attendance, Nancy Baran, Rachelle
7 Galant, and Umesh Solanki.

8 Do you see that?

9 A. I wasn't.

10 Q. You weren't present. But
11 you received the minutes of the meeting;
12 is that right?

13 A. I received this e-mail.

14 Q. Okay. And there's a section
15 on compliance agreement forms process.
16 Do you see that?

17 A. What number, please?

18 Q. The very first one on the
19 first page. Compliance agreement forms
20 process.

21 A. That little paragraph?

22 Q. Mm-hmm.

23 A. Okay.

24 Q. Do you have an understanding

1 of what the compliance agreement forms
2 were or what they -- what they were used
3 for?

4 A. This -- this Michael is --
5 is Michael Clarke, not Michael Perfetto.
6 You --

7 Q. Okay.

8 A. Just to clarify that.

9 Q. Okay.

10 A. So he's your compliance
11 officer. I've never -- I never -- nobody
12 ever calls me Michael in any -- I just
13 want to make sure that you were fully
14 aware of that.

15 Q. I was not. So thank you.

16 A. Okay. So he -- he would
17 have, I guess, drafted a form for then,
18 Michael Clarke, that was a compliance
19 agreement form.

20 Is it attached?

21 Q. Well, I was going to ask
22 you, if -- if that's the form, the
23 customer questionnaire, which begins
24 three pages later, the compliance

1 agreement form?

2 A. Yeah, I -- I couldn't answer
3 that.

4 Q. Actually, right before the
5 customer questionnaire, there is a
6 compliance agreement form.

7 A. There is? What page?

8 Q. 2150280.

9 A. It's a heck of an e-mail.
10 Okay.

11 Q. So do you know whether or
12 not the process was implemented whereby
13 you would use this compliance agreement
14 form?

15 A. Let me just read the form
16 first.

17 Q. Okay.

18 A. And your question?

19 Q. Do you know whether a form
20 such as this was ever adopted and used at
21 Actavis?

22 A. I believe a form maybe not
23 quite like this. But there was a --
24 there was -- there was a form, a

1 compliance agreement form, I believe.

2 Q. That was adopted as a result
3 of -- of this meeting and potentially
4 other meetings around this time?

5 A. As I recall sitting here, I
6 believe there was some sort of -- some
7 sort of a compliance form that was mailed
8 out to customers. I don't know if the
9 wording is exactly like this wording.
10 You'd have to show me the -- the -- this
11 is a draft I believe, a reading, right --

12 Q. Yeah, I think you're
13 right --

14 A. -- of the enhancement
15 program?

16 Q. I think you're right.
17 Because you can see that there are
18 comments noted on the right-hand side.

19 A. Okay. Okay.

20 Q. So this was -- this
21 discussion, this e-mail and -- and the
22 circulation of these documents, was this
23 part of the process of enhancing the SOM
24 program so that it would apply to your

1 customers' customers?

2 A. I think this is a summary of
3 the cross-functional team, not just what
4 you're speaking of, but of the total
5 improvement of the SO -- SOM system.

6 Q. Including an enhancement so
7 that it would apply to your customers'
8 customers, correct?

9 A. It would -- it would improve
10 all aspects of the process. It's an
11 update of the entire process. We had a
12 process. This is an update of the entire
13 process.

14 Q. No, I understand that. But
15 I'm wondering --

16 A. Yeah.

17 Q. -- if part of that update
18 was to expand the program so that it
19 would cover your customers' customers and
20 not just cover direct customers.

21 A. I believe, and I can't
22 recall 100 percent, but I'm not sure I
23 can say that, because we -- we've -- we
24 may have had -- we may have had a system

1 prior to this for the customers'
2 customers.

3 Q. So you don't recall when the
4 program was expanded to --

5 A. I don't.

6 Q. -- include your customers'
7 customers?

8 A. I don't. Not -- not without
9 seeing some kind of document and maybe a
10 signed agreement with a consulting firm
11 or something.

12 Q. Do you see on the second
13 page, under the first bullet and the
14 second arrow, do you see where it states,
15 "Finalize comprehensive list of customers
16 purchasing controls, (combining list
17 provided by Ara and IT, understanding is
18 that it will include both direct and
19 indirect)."

20 Do you see that?

21 A. I do.

22 Q. Does that suggest to you
23 that this -- the SOM program is being
24 expanded to include both direct and

1 indirect customers?

2 MR. LUXTON: Objection to
3 form.

4 THE WITNESS: Again, it's an
5 enhancement program. I can't make
6 the assumption that indirects were
7 not part of the SOM before without
8 seeing documentation.

9 BY MS. BAIG:

10 Q. Do you know whether these
11 customer questionnaires were sent to all
12 customers? And when I say these, I
13 don't -- I don't mean this particular
14 one, but the -- the final one, assuming
15 there was one?

16 A. I wouldn't say all
17 customers, because we had -- we -- all --
18 I would say no to all customers.

19 Q. Because why?

20 A. Because some don't buy --
21 don't buy C-IIs. Some don't buy -- some
22 of our customers didn't buy Rx product.
23 They just bought OTC items. So it
24 depends on the customer.

1 Q. Do you know whether a form
2 like this was sent to all customers
3 that -- that bought Schedule II opioids?

4 A. I would believe that this
5 was sent to customers that -- as part of
6 the improvement, that this was sent to
7 the customers that were buying the C-II
8 products.

9 Q. After -- after it was
10 developed, correct?

11 A. Yeah. Again not -- I don't
12 know if this -- this is a draft. I'm not
13 sure of the exact letter.

14 Q. Understood. And looking --
15 turning to the draft Actavis suspicious
16 order monitoring indirect customer sales
17 SOP. Do you see that?

18 A. What page?

19 Q. 2150289.

20 A. I do.

21 Q. And this appears to be
22 exactly what it says at the top, right,
23 an SOP developed for suspicious order
24 monitoring just for your indirect

1 customers; is that right?

2 A. That's what it reads.

3 Q. Okay.

4 A. It doesn't read the word
5 "just" though.

6 Q. Right. And if you turn to
7 Page 2 at the bottom.

8 A. Okay.

9 Q. There's a section entitled
10 "Indirect customers buying high
11 quantities of controlled products."

12 Do you see that?

13 A. Yes.

14 Q. And it states that "Actavis
15 indirect customer sales will be monitored
16 through ValueTrak safe and secure module
17 or a comparable program on a monthly
18 basis."

19 Do you see that?

20 A. Yes.

21 Q. Is it your understanding
22 that -- that that was put into place?

23 A. I believe we engaged
24 value -- ValueTrak. I don't know when.

1 Q. And it goes on to state that
2 "the sales will be monitored for higher
3 than average purchases of a single
4 product based on the previous three
5 months of purchases," correct?

6 A. Yes.

7 Q. And it goes on to state that
8 "if a pharmacy or individual store's
9 previous 30-day purchases exceeds
10 50 percent higher than their established
11 three-month average, notification will be
12 sent by Actavis to the point-of-sale
13 wholesaler or distributor highlighting
14 the current order quantity and historical
15 average."

16 Do you see that?

17 A. Yes.

18 Q. Do you recall that such
19 notifications were sent to your
20 customers?

21 A. As I sit here today I
22 can't -- I can't testify that I recall us
23 sending those letters. But this is
24 part -- if this was finalized, this is a

1 draft. They would have -- they would
2 have executed through it.

3 Q. And do you notice this is a
4 little different than the one that we
5 looked at earlier that had a 50 percent
6 threshold for a six-month average? This
7 is a 30-day, 50 percent threshold. Do
8 you remember a shift?

9 A. That was -- we were looking
10 at direct before.

11 Q. I see.

12 A. This is indirect.

13 Q. Okay. Do you see in the
14 very last paragraph --

15 A. Of the document?

16 Q. Of the next page.

17 A. Okay.

18 Q. There is a Section 10 that
19 says, "Reporting suspicious activity to
20 the DEA."

21 A. Yes.

22 Q. Were you ever involved in
23 reporting suspicious activity to the DEA?

24 A. I wasn't personally.

1 Q. Do you recall seeing reports
2 of suspicious activity to the DEA?

3 A. Not as I sit here today. I
4 probably wouldn't be -- we didn't -- we
5 as a commercial group didn't interact
6 with the DEA on an ongoing basis.

7 Q. Do you know who, if anyone,
8 at Actavis interacted with the DEA?

9 A. I'm sure people did, I don't
10 know who.

11 Q. You don't know which
12 department or which individuals?

13 A. Michael Clarke. I mean,
14 he's your compliance person. I'm sure
15 Kelly was probably involved. I don't
16 know -- I don't know everybody in the --
17 on that sector of the business.

18 Q. Okay. But you had no
19 involvement and don't recall seeing --
20 seeing the reports?

21 A. Yeah, I never -- I never
22 dealt with DEA.

23 Q. Okay. I'll have the next
24 document marked as Exhibit 9.

1 (Document marked for
2 identification as Exhibit
3 Allergan-Perfetto-9.)

4 BY MS. BAIG:

5 Q. This is a document
6 Bates-stamped ACQUIRED_ACTAVIS_01509414
7 through 9416. It's an e-mail from Nancy
8 Baran -- to Nancy Baran --

9 A. Okay.

10 Q. -- sent September 21st,
11 2012.

12 Do you see that?

13 A. I do.

14 Q. And it states at the top,
15 "SOM training completed."

16 Do you see that?

17 A. I do.

18 Q. And then it states, "In
19 attendance, Michael Perfetto," a few
20 lines below.

21 Do you see that?

22 A. I see that.

23 Q. Do you -- do you recall
24 completing your SOM training in or about

1 September of 2012?

2 A. I don't recall it, but, I
3 mean, I'm sure this document says that I
4 was at this meeting.

5 Q. Okay. So you don't have any
6 reason to doubt that?

7 A. No.

8 Q. Okay. And if you look to
9 the very bottom of the page, in the last
10 paragraph it says, "About one year ago
11 engaged Cegedim Compliance Solutions.
12 Implemented an enhanced statistical model
13 into our order management system."

14 Do you see that?

15 A. Yep.

16 Q. Does that suggest to you
17 that that change took place in or about
18 September of 2011?

19 A. It suggests that.

20 Q. It goes to state that, "The
21 model was developed based on an extensive
22 review/analysis of historical data.
23 Series of mathematical calculations
24 provides an overall score based on a

1 number of order
2 characteristics/attributes."

3 A. Right.

4 Q. "Each has different
5 significance/importance. Output is the
6 system recommends orders of interest."

7 Do you see that?

8 A. Yep.

9 Q. Does that suggest to you
10 that the new program that was implemented
11 flagged orders of interest?

12 A. It does, but I don't know
13 how you define "interest."

14 Q. Okay. Who would you ask at
15 Actavis if you wanted to know that?

16 A. Nancy.

17 Q. Okay.

18 A. Baran.

19 Q. Can you read the next
20 paragraph to yourself for a moment. Does
21 this refresh your recollection as to
22 whether or not this program was ever
23 implemented or not?

24 A. I believe parts of the

1 enhancement system were implemented. I'm
2 not sure because this is getting towards
3 the end of my career at Actavis, what was
4 actually -- I can't answer if it was
5 100 percent implemented. But I'm sure
6 the enhancements -- some of the
7 enhancements were implemented.

8 Q. But the specific one that's
9 being discussed here, being the Cegedim
10 Compliance Solutions enhanced statistical
11 model --

12 A. Right.

13 Q. -- it's unclear to me from
14 reading this e-mail whether that ever was
15 implemented or not. And I'm just
16 wondering if you know?

17 A. I wouldn't know, but Nancy
18 would know, because she was the head of
19 the cross-functional team. She also
20 stayed on with Watson after I left. So
21 she would know what it was.

22 Q. And then if you move down a
23 little bit, a few paragraphs, it says,
24 "Plan is such that we will continue to

1 run the old SOM model for a few weeks."

2 A. Okay.

3 Q. "We start officially using
4 the new model in full test/parallel mode
5 on Monday."

6 A. Okay.

7 Q. "The model is doing
8 everything it would except it is not
9 physically holding the orders, so that
10 gives us an opportunity to warm up and
11 not impact our operations with slower
12 than normal order releases. Plan to
13 fully go live by mid-October."

14 A. Okay.

15 Q. Do you see that? Were you
16 there in mid-October still?

17 A. I was. I left the end --
18 the end of December.

19 Q. 2012?

20 A. Yes.

21 Q. Okay. But you're not sure
22 whether it went live by mid-October or
23 not; is that right?

24 A. Yeah. Without seeing an

1 announcement or something that said, you
2 know, our new, improved system is
3 implemented.

4 Q. Do you know who Michael
5 Schmylik (ph) is?

6 A. I do not.

7 (Document marked for
8 identification as Exhibit
9 Allergan-Perfetto-10.)

10 BY MS. BAIG:

11 Q. I'll have this document
12 marked as Exhibit 10. This document is
13 Bates-stamped ACQUIRED_ACTAVIS_00968401
14 through 968404.

15 But I'll note for the record
16 that it's -- a multi-page PowerPoint is
17 attached to the e-mail. And each page of
18 that PowerPoint has the same Bates stamp,
19 968404.

20 All right. Do you see this
21 is an e-mail attaching a PowerPoint
22 entitled "Suspicious Order Monitoring,
23 Morristown, New Jersey"?

24 A. Mm-hmm.

1 Q. And what's in Morristown,
2 New Jersey?

3 A. That's where Actavis had
4 their corporate office.

5 Q. And do you know who created
6 this presentation?

7 A. I do not.

8 Q. Did you create -- do you
9 know if you created it?

10 A. I did not.

11 Q. You know that you didn't or
12 you're not sure?

13 A. I'm 100 percent sure that I
14 didn't create this.

15 Q. You did not create this?

16 A. No.

17 MR. ROTH: Just so the
18 record's clear, I think there's a
19 few presentations that are in
20 there.

21 THE WITNESS: Oh, there is,
22 sorry.

23 MR. ROTH: There's one 403
24 and one is 404. It looks like two

1 different decks. Yeah, and they
2 have different dates on them.

3 THE WITNESS: Yeah, one is
4 '11.

5 MS. BAIG: Where does your
6 second one start?

7 MR. ROTH: 0968404 and the
8 other one is 403. The first
9 presentation has got 13 pages.
10 The second one looks like it has
11 also 13 pages. And the cover
12 e-mail references both of these as
13 being attached.

14 BY MS. BAIG:

15 Q. So the first one you have is
16 entitled "Suspicious order monitoring,
17 Morristown, New Jersey," correct?

18 A. What -- what's the date on
19 the front page?

20 Q. October 26, 2012.

21 A. Okay. That's the date that
22 you want to focus on?

23 Q. Yes. Okay. Great. We've
24 got two presentations. One is dated

1 October 26, 2012, and one is dated
2 October 26, 2011. Do you see that?

3 A. I do.

4 Q. Okay. Why don't we start
5 with the first attachment, which is
6 October 26, 2012.

7 And you said you didn't --
8 you don't know who created this. Do you
9 know who created the other one?

10 A. I don't. But it doesn't --
11 I don't. I don't -- nobody seems to
12 have -- it could have been a
13 cross-functional team.

14 Q. But it was sent to you from
15 Rosemarie Casilli, correct?

16 A. Right. She was the -- she
17 was my admin for the department. So it
18 could have been -- again, it could have
19 been a cross-functional team between
20 compliance, Nancy, Jinping. I don't
21 know. I'd be guessing.

22 Nobody -- nobody put their
23 author -- usually you would put something
24 here.

1 Q. Okay. And do you see on the
2 second page of the first presentation?

3 A. Yep.

4 Q. It says -- there are a
5 number of bullets. Is it your
6 understanding that these are bullets that
7 were part of the SOM process?

8 Or what is your
9 understanding of what this PowerPoint is,
10 if you have one?

11 A. I don't know what it is. It
12 could even be that training. I -- I
13 don't know. I -- I don't -- it's an
14 update of suspicious order monitoring --

15 Q. Okay.

16 A. -- to give to somebody. And
17 this deck doesn't say who was in the
18 meeting.

19 Q. Okay.

20 A. So I'm not even sure if this
21 was presented.

22 Q. Okay. And you see, on the
23 first page of the first presentation,
24 first substantive page. It says, "Know

1 your customer initiative"?

2 A. Yes.

3 Q. Are you familiar with what
4 that initiative was?

5 A. I -- I lost your page.
6 Where -- where are you?

7 Q. Do you see the presentation
8 that begins October 26, 2012?

9 A. Yes.

10 Q. And if you flip to the first
11 substantive page there.

12 A. Oh, "know your customers"
13 initiative?

14 Q. Mm-hmm.

15 A. Okay.

16 Q. Do you know what that
17 initiative was?

18 A. I don't. Maybe it's
19 described in here. I don't know.

20 Q. Do you know whether that
21 initiative was prompted by meetings that
22 you had with the DEA that suggested that
23 you should know your customer's customer?

24 MR. LUXTON: Objection to

1 form.

2 THE WITNESS: I don't see
3 how you get to know your customer
4 from that.

5 BY MS. BAIG:

6 Q. Okay.

7 A. I -- whoever put this deck
8 together would have to define that to me.

9 Q. Okay. But you don't have
10 any recollection of it?

11 A. No.

12 Q. And do you have a
13 recollection of the difference between
14 the direct SOM process and the indirect
15 SOM process there?

16 A. I understand the basics of
17 how the suspicious order monitoring
18 worked for direct and how it worked for
19 indirect.

20 Q. What was the -- what was the
21 difference?

22 A. The direct -- the suspicious
23 order monitoring system on direct
24 monitored incoming direct orders and

1 had -- had a whole system that tracked
2 the Cardinals of the world, the Walgreens
3 of the world, and how they are ordering,
4 and used our orders as a basis.

5 The indirect used value --
6 whatever it was.

7 Q. ValueTrak?

8 A. ValueCentric or whatever it
9 is. So they used a more technical system
10 to track the -- it's more -- it's a lot
11 more complicated in my mind because
12 there's more indirect customers.

13 Q. Do you know whether they
14 used Actavis' chargeback data to track
15 the indirect SOMs?

16 A. I'm not as IT smart enough
17 to know whether this ValueTrak uses your
18 chargeback as a basis. I -- I believe it
19 does, but I'm not -- you'd have to ask an
20 IT guy like Umesh that.

21 Q. And if you turn to the next
22 page you see there's some language with
23 respect to the Controlled Substances Act.
24 Do you see that?

1 A. Yes.

2 Q. Do you have a -- a
3 recollection of having a basic
4 understanding of what the Controlled
5 Substances Act was at or about this time?

6 A. At -- at that time I would
7 have been in meetings, I would have had
8 an understanding. Today I don't, but at
9 that time I probably would have a general
10 understanding of -- of it.

11 Q. And do you see on the next
12 page there's a discussion of the enhanced
13 SOM systems and processes?

14 A. I do.

15 Q. And then there's the "know
16 your customer" due diligence. Do you see
17 that?

18 A. I do.

19 Q. And did you have an
20 understanding of what that due diligence
21 process was?

22 A. I'm sure there was an SOP
23 for new customers that was developed as
24 part of this enhancement.

1 Q. And do you see the next item
2 is know your customers' customer?

3 A. I -- I see that.

4 Q. And what was your
5 understanding as to how you were supposed
6 to know your customers' customers, if you
7 had one?

8 A. By utilizing the -- the SOM
9 ValueTrak, or ValueCentric. I forget the
10 actual name -- people change their names.
11 Utilizing that system to track the
12 customers' customers.

13 Q. And to track specifically
14 what -- how many -- how many pills and
15 whether -- how many pills were being
16 ordered and whether those orders were
17 suspicious?

18 A. To track I think -- I don't
19 know the specifics. But to -- to track
20 orders of the indirect purchases.

21 Q. To see whether or not they
22 were excessive or not; is that right?

23 MR. LUXTON: Objection.

24 THE WITNESS: We'd have to

1 look at the -- we'd have to look
2 at the final SOP and it would --
3 would specifically say that, what
4 it was.

5 BY MS. BAIG:

6 Q. Is it your understanding
7 that this is -- that this is a summary of
8 the final SOP dated October 26, 2012?

9 A. I don't know what -- I don't
10 know what this was meant for.

11 Q. And it says under Item 4,
12 "Develop SOPs, processes, best
13 practices," right?

14 A. Yeah. Yeah.

15 Q. Does that suggest to you
16 that they are still developing the SOPs
17 for SOM?

18 MR. ROTH: Object to form.

19 THE WITNESS: Again, it --
20 there -- there may have been some
21 SOPs, but there's always a
22 constant improvement of the
23 system. So I'd be -- I'd be
24 really guessing to answer that

1 question.

2 BY MS. BAIG:

3 Q. So looking at the next page,
4 there's a box that is labeled SOM
5 steering committee. Do you see that?

6 A. Yep.

7 Q. Were you on the steering
8 committee?

9 A. I believe so.

10 Q. And do you see under the
11 "know your customer" box?

12 A. Yep.

13 Q. It says, "New customer
14 approval process."

15 Do you know what that
16 process was?

17 A. As I sit here today, I
18 don't. But if you showed me the SO --
19 the final SOP, I'm sure there'd be
20 something in there regarding this matter.

21 Q. If you go two bullets down
22 in that same box, do you see where it
23 says, "Monitor indirect sales, know your
24 customers' customer, ValueCentric, EDI

1 data at aggregate level"?

2 A. Yes.

3 Q. Does that refresh your
4 recollection that it was, in fact,
5 ValueCentric and the EDI data that was
6 being used for this?

7 A. That's what it's saying
8 here.

9 Q. Do you have any recollection
10 of ever looking at suspicious orders
11 and -- and making decisions as to whether
12 or not those orders' shipments ought to
13 be halted for any of your customers?

14 MR. ROTH: Object to form.

15 THE WITNESS: I mean, as I
16 sit here today, I don't remember
17 doing that, but it -- I'm sure,
18 that's probably an e-mail or some
19 kind of document -- I'm sure, if I
20 got involved and it was elevated
21 to me, I would make the decision.

22 BY MS. BAIG:

23 Q. But you don't remember any
24 that were so big that you can remember

1 off the cuff right now?

2 A. You know, not -- not from --
3 if I had documentation and we could --
4 and we could see the chain I would -- I
5 would be able to answer that question.
6 But as I sit here today, I can't. I
7 can't remember what I did in 2012 or '11
8 or '10.

9 Q. If you turn to Page 9 of
10 that same PowerPoint. There's an OI
11 summary by product group. Do you know if
12 OI stands for orders of interest?

13 A. I never used that term. So
14 I -- I would -- it's not a term that I
15 ever used.

16 Q. And looking at this, at this
17 chart here with the lines graph and
18 dollars graph, do you have an
19 understanding of what this is or you
20 don't?

21 A. I mean lines are orders,
22 I -- I would -- don't know, I'd be
23 guessing. This is like customer
24 service-type language.

1 Q. So you -- you don't
2 understand what this chart is -- is being
3 used to convey?

4 A. Not well enough under oath
5 to talk about it.

6 Q. Well, I'm just asking
7 what -- how you would read this chart,
8 given your lengthy career?

9 Do you have a way of reading
10 this chart, or you -- you don't
11 understand what this means?

12 A. It's an odd chart, the first
13 chart. Because it's on -- on the one
14 side it doesn't even have a graph. I
15 think it's just showing, of our total
16 lines -- of our total lines, meaning our
17 total orders, this is the percentage of
18 orders -- orders that -- orders of
19 interest. OI, I presume, is orders of
20 interest.

21 Q. The highest being fentanyl
22 patch, correct?

23 A. That's correct.

24 Q. And the second highest being

1 morphine sulfate?

2 A. That's right.

3 Q. And the third highest being
4 oxycodone, correct?

5 A. Yes.

6 Q. And the chart underneath
7 shows what?

8 A. It looks like dollars.

9 Q. And that would be dollars
10 for the orders of interest?

11 A. Yes.

12 Q. And so you have -- for the
13 fentanyl patch -- I mean, it says
14 dollars, but it's showing percentages.
15 Do you understand what this is conveying?

16 A. To me, this -- this bucket
17 is just showing you, of these products,
18 what percentage -- which mixed
19 amphetamine had 45 percent of the dollars
20 of the orders.

21 Q. So looking at fentanyl
22 patch, 26.23 percent of the dollars
23 ordered for fentanyl patch were orders of
24 interest; is that right?

1 A. I don't read it that way.

2 Q. How do you read it?

3 A. I read it, of the whole
4 basket, but I could be totally wrong. I
5 didn't put this presentation together.
6 We have to ask whoever put this together
7 what they meant. It's really not
8 depicted correctly.

9 Q. So fentanyl -- fentanyl
10 patch is showing 26.23 percent of total
11 dollars, correct?

12 MR. ROTH: Objection. Lacks
13 foundation. Calls for
14 speculation.

15 BY MS. BAIG:

16 Q. Again, I -- well, if you
17 look at the second line under the
18 heading, it says -- look at the heading.
19 It says, "OI summary by product group."
20 The first line says, "Percent of total
21 lines," which we've already discussed.
22 The second one says, "Percent of total
23 dollars," correct?

24 A. Okay.

1 Q. I think what you've
2 suggested is you're unclear as to what
3 the total dollars are, right?

4 A. I am.

5 Q. Okay. But we can look at
6 fentanyl patch and see that, at least as
7 reflected on this chart, 26.23 percent of
8 total dollars, whatever that is, were
9 orders of interest. Is that how you read
10 this?

11 A. No, I don't.

12 Q. How do you read it?

13 A. I read it as 26 percent of
14 the dollars of all these products. But
15 again, I didn't put this slide together.

16 Q. I see. The 26 percent of
17 the dollars of all of these products --

18 A. That's how I read it.

19 Q. -- were fentanyl patch
20 orders of interest?

21 A. That's how I read it. But
22 I'm not an expert on this. I didn't put
23 this slide together.

24 Q. And the next page shows an

1 order of interest summary by customer
2 family?

3 A. Okay.

4 Q. According to the heading,
5 correct?

6 A. Mm-hmm.

7 Q. And again, we have percent
8 of total lines and percent of total
9 dollars, correct?

10 A. Yep.

11 Q. Does this suggest to you on
12 the first chart that AmerisourceBergen
13 has the second highest percent of total
14 lines that were flagged as orders of
15 interest?

16 MR. PORTER: Object to form.

17 THE WITNESS: I'm really not
18 prepared to answer, because I
19 don't know what -- both of us are
20 struggling -- whoever did this, is
21 using as a basis.

22 It's a little confusing to
23 me. Somebody would have to walk
24 me through this to explain it to

1 you, you know?

2 BY MS. BAIG:

3 Q. In any event, it's an order
4 of interest summary by customer family,
5 correct?

6 A. That's what it appears to
7 be.

8 Q. Broken down by percent of
9 total lines and percent of total dollars,
10 correct?

11 A. Total lines and total
12 dollars, yes.

13 Q. And does this suggest to
14 you, looking at the second chart, that
15 McKesson Drug had -- actually, is it
16 46.31 percent of total dollars were
17 orders of interest, correct?

18 MR. ROTH: Objection to
19 form.

20 MR. LUXTON: Objection to
21 form.

22 THE WITNESS: Again, I --
23 you'd have to -- you'd have to see
24 how -- how, whoever developed

1 this, whether it was marketing or
2 customer service, or a combination
3 of fewer people -- they don't give
4 you -- without being here and
5 explaining it, it's hard to
6 speculate what they use as a
7 reference.

8 The mix of the products
9 could reflect a change in the
10 percentage as dollars. So I would
11 be -- I would be total --
12 totally -- this is totally out of
13 my realm to discuss this without
14 an expert that put the slides
15 together.

16 BY MS. BAIG:

17 Q. Well, you do see that
18 McKesson Drug is identified as having
19 46.31 percent of total dollars, correct?

20 A. I see that fact, yes. I
21 don't know what it means.

22 Q. And do you see that Cardinal
23 Health is identified as having, I
24 believe, 48.21 percent of total dollars?

1 Do you see that?

2 A. If that's the case, the
3 Cardinal -- the Cardinal blue -- blue
4 bucket should be higher than the McKesson
5 bucket.

6 Q. Maybe it's 43 -- it's hard
7 to read it.

8 A. Okay.

9 Q. But it's -- maybe it's
10 43.21 percent.

11 Do you see that?

12 A. Yep.

13 Q. Making McKesson Drug the
14 biggest one; is that right?

15 A. They're the biggest
16 wholesaler.

17 Q. And if you look to the next
18 page, you see the orders of interest
19 summary by reason code.

20 A. Okay.

21 Q. And it looks like it appears
22 to be a breakdown --

23 A. Yep.

24 Q. -- based on six-month total.

1 You have a number of categories at the
2 bottom, right? You've got the six-month
3 total is above historic average, and it
4 tells you the percentage for which that's
5 the case, correct?

6 A. Yes.

7 Q. And then you have the 12
8 monthly total is above historic average.
9 And it tells you the percentage is
10 19.46 percent, correct?

11 A. I am just reading what
12 you're reading.

13 Q. Is that how you read it?

14 A. That's what I read here.

15 Q. Okay. And then you have the
16 six-month total is above projected amount
17 at 14.25 percent, correct?

18 A. Yes.

19 Q. And then you have a 12
20 monthly total is above projected amount
21 at 8.6 percent.

22 Do you see that?

23 A. Yes.

24 Q. And then you just have just

1 frequent ordering at 3.1 percent.

2 Do you see that?

3 A. I do.

4 Q. Do you understand why this
5 chart was put together?

6 A. It's a summary of -- by
7 reasons, reason code.

8 Q. And do you understand for
9 what purpose this chart was put together?

10 A. Not 100 percent, because I
11 don't know who -- what they use -- we're
12 not sure what this -- what this deck was
13 used for.

14 Q. Does this chart suggest to
15 you that depending on whether you use a
16 six-month average or a 12-month average
17 as your base for determining orders of
18 interest, it -- the number of orders of
19 interest will change?

20 A. I don't know.

21 Q. Looking at the second
22 PowerPoint that's attached to this
23 exhibit, dated October 26, 2011.

24 A. Okay.

1 Q. Do you see on the first page
2 there's an addendum?

3 A. Yeah.

4 Q. And do you see at 10:30 to
5 11:15 it states, "Knowing your customers'
6 customer, DEA requirement."

7 A. Yes.

8 Q. Do you recall that being a
9 DEA requirement?

10 A. I don't -- I don't -- as we
11 sit here today, I don't know if it was a
12 DEA requirement, without seeing the DEA
13 regs.

14 Q. And looking at the next
15 page, does this suggest to you that you
16 were at this meeting?

17 A. This suggests that I was
18 there.

19 Q. Okay. And do you see
20 there's two -- there are two persons
21 identified under Cegedim Compliance
22 Solutions, Robert C. Williamson and
23 Jonathan Kuhn?

24 A. I do.

1 Q. Now that you've seen those
2 names, does that reflect your --
3 reflect -- refresh your recollection that
4 those were the individuals that were
5 involved from Cegedim?

6 A. They were at this meeting.

7 Q. Do you remember them now
8 that you see their names, or no?

9 A. I remember the PharmD. I
10 don't remember the other gentleman.

11 Q. You remember Jonathan Kuhn?

12 A. Jonathan Kuhn?

13 Q. Is that the one that you
14 remember?

15 A. I don't remember. I knew
16 somebody had a really -- like -- you
17 don't meet many Ph.D.s, so I remember
18 meeting -- I don't remember the actual
19 face. I remember somebody from that
20 group had a -- I was impressed. Somebody
21 impressed me with the fact that they had
22 a Ph.D. in physics, or mathematics or
23 something. So I was impressed that they
24 brought that level of quality person to

1 our meeting.

2 Q. And do you remember anything
3 about his presentation, if there was one?

4 A. Not as I sit here today.
5 I'm sure if I reviewed this deck, I
6 may -- may understand it.

7 Q. If you look to Slide 6 of
8 this deck.

9 A. Yep.

10 Q. You see suspicious order
11 validation logic.

12 Do you recall SOVL being a
13 thing at Actavis?

14 A. I -- I don't remember that
15 term.

16 Q. Okay. If you look at the
17 right side of this flowchart, you see --
18 well, moving from the bottom up to the
19 top of the right side you see that
20 there's a formula by which it appears
21 certain issues are being -- certain
22 orders are being flagged as orders of
23 interest. Is that how you read this?

24 A. I do see "deemed as order of

1 interest."

2 Q. Okay. And it suggests that
3 that formula is being applied to the
4 total orders in order to flag certain
5 orders as orders of interest; is that
6 right?

7 A. That's what it appears to
8 be.

9 Q. And then -- and then a hold
10 was being placed to investigate and
11 document, correct?

12 A. I -- I don't know if this is
13 an actual procedure or is this a
14 suggestion or a plan at this -- I don't
15 know what this -- again, does it say what
16 the meeting was?

17 So I'm not sure whether this
18 is Dendrite's plan to us or Actavis
19 showing what we have currently. I'm not
20 sure.

21 Q. All right. So you don't
22 have an independent recollection that
23 this was the process in place, correct?

24 A. No. It could have been,

1 I -- I don't know.

2 Q. You don't know one way or
3 the other. Okay.

4 If you look at Slide 12, the
5 second to last slide?

6 A. Yep.

7 Q. Do you see under adequate
8 controls, it says, "Orders of interest
9 status is not visible during order
10 entry"?

11 A. I do.

12 Q. And that it -- orders of
13 interest status cannot be applied
14 manually?

15 A. I do.

16 Q. And do you know -- do you
17 know how orders of interest status worked
18 at all at Actavis when you were there?

19 A. I do not.

20 Q. Okay.

21 MR. LUXTON: Can we take a
22 break before you go to the next
23 document?

24 MS. BAIG: Mm-hmm.

1 MR. LUXTON: Thanks.

2 THE VIDEOGRAPHER: Stand by,
3 please. The time is 2:32 p.m.
4 Going off the record.

5 (Short break.)

6 THE VIDEOGRAPHER: So we are
7 back on the record. The time is
8 2:53 p.m.

9 MS. BAIG: I'll have the
10 next document marked as
11 Exhibit 11.

12 (Document marked for
13 identification as Exhibit
14 Allergan-Perfetto-11.)

15 BY MS. BAIG:

16 Q. Do you recall there ever
17 being a question in your mind as to
18 whether or not suspicious order
19 monitoring applied to your indirect
20 customers?

21 A. Is this in reference to
22 this?

23 MR. LUXTON: Objection to
24 form.

1 BY MS. BAIG:

2 Q. Well, before we get to that.

3 A. I was like -- excuse me.

4 Can I get -- sorry.

5 Q. Do you recall there ever
6 being a question in your mind or a
7 discussion at work as to whether or not
8 suspicious order monitoring applied to
9 your indirect customers?

10 MR. LUXTON: Objection to
11 form.

12 THE WITNESS: Answer it
13 again. Because I'm trying -- I'm
14 trying to -- you got me going on
15 this. I started reading that. So
16 I had my mind half on that. Go
17 ahead.

18 BY MS. BAIG:

19 Q. Do you recall --

20 A. Yeah.

21 Q. -- whether or not there was
22 ever a question as to whether or not
23 suspicious order monitoring should be
24 applied to your indirect customers?

1 A. Do I recall? As I sit here
2 today, you know, I don't -- I don't
3 recall discussions about that. Could
4 have been. I just don't remember.

5 Q. Okay. So if you look at the
6 document that's been marked as
7 Exhibit 11. It appears to be an e-mail
8 from Terri Nataline to you and Jinping --

9 A. Okay.

10 Q. -- McCormick. Subject is
11 "Suspicious Order." Date is April 8,
12 2011. She states to you, "We don't need
13 to monitor to the retail level."

14 Do you see that?

15 A. I do.

16 Q. And your response was,
17 "Good," and you forwarded it on to Ara
18 Aprahamian and Nancy Baran, correct?

19 A. Yes.

20 Q. Do you take from this that
21 your understanding at that time, in or
22 about April of 2011, was that suspicious
23 order monitoring did not need to be
24 conducted at the retail level?

1 A. I don't know what Terri is
2 using as a -- she was VP of regulatory, I
3 believe. And I'm not sure what she was
4 using as her reference. Was it a
5 regulatory policy, you know, just to look
6 at one e-mail and to make that decision.

7 Q. Sure. But the subject is
8 "Suspicious Order," correct?

9 A. Yes.

10 Q. And she states, "We don't
11 need to monitor to the retail level."

12 Was that your understanding
13 at that time?

14 A. That's what Terri is saying.

15 Q. Right. Did you have that
16 understanding at that time?

17 A. I don't know what I had
18 in -- I don't know where I was on that
19 point, I'll be honest with you, in 2011.

20 Q. But your response was,
21 "Good," correct?

22 A. Good. I don't know even
23 what I --

24 Q. You don't know what you

1 meant by that?

2 A. "Good" meaning that she
3 replied to me? "Good" I'm okay? I'm not
4 sure what I meant.

5 (Document marked for
6 identification as Exhibit
7 Allergan-Perfetto-12.)

8 BY MS. BAIG:

9 Q. I'll have this document
10 marked as Exhibit 12.

11 It's a document
12 Bates-stamped ACTAVIS_0632024 through
13 2027.

14 It starts as an e-mail from
15 Michael Perfetto to Michael Dorsey cc'g
16 Rachelle Galant, in or about -- dated
17 November 16, 2010.

18 A. Okay.

19 Q. Subject line is "Oxycodone
20 IR Tabs, Outstanding Orders By Customer."

21 Do you see that?

22 A. Yep.

23 MR. ROTH: And just so the
24 record is clear, so Exhibit 12 has

1 an Actavis Bates stamp, and
2 there's no confidentiality
3 designation. We have reproduced
4 all of those with Allergan Bates
5 stamps with confidentiality
6 designations so we don't have to
7 do this on the record, we'll swap
8 out the exhibits afterwards so
9 that the properly denoted
10 confidentiality designation lives
11 on the deposition exhibit.

12 MS. BAIG: We can take that
13 up when we have an opportunity to
14 see what you want to swap it out
15 with.

16 MR. ROTH: Okay.

17 BY MS. BAIG:

18 Q. Now, if you look to the
19 bottom of the first page, do you see in
20 the e-mail from Rachelle Galant to you
21 and others, she's providing a snapshot of
22 the current order status of your
23 customers on oxycodone IR 15-milligram
24 and 30-milligram tablets?

1 Do you see that?

2 A. I see it.

3 MR. ALLEGAERT: Put the
4 whole thing up.

5 BY MS. BAIG:

6 Q. And she goes on to state
7 that, "Below shows the following
8 customers that have open orders that
9 exceed their normal monthly ordering
10 pattern on either the 15-milligram,
11 30-milligram, or both."

12 Do you see that?

13 A. I do.

14 Q. And down below, there's a
15 series of numbers.

16 A. Is this the attachment?

17 Q. She says below and then
18 underneath the e-mail, you see that
19 there's a series of numbers.

20 Do you see that?

21 A. No. I see -- I see an image
22 attachment on the -- on the front of the
23 e-mail. I was wondering where that was.

24 Q. I don't know. This document

1 was produced to us like this.

2 A. Okay.

3 Q. All I can say is that in the
4 e-mail she states that below -- "Please
5 see below for a snapshot of the current
6 order status."

7 Do you see that?

8 A. I see that.

9 Q. And do you see the numbers
10 below that show, for example, oxy IR
11 15 milligrams, oxy IR 30 milligrams, and
12 there's a designation received, open
13 received, open. And then there's Bellco.
14 144, 360, 408, 648.

15 Do you see that?

16 A. I do.

17 Q. Do you understand what --
18 what this is conveying?

19 A. It's messed up. I don't --
20 because it's messed up. If it was in an
21 organized chart, I could probably figure
22 it out. But it looks like you have four
23 numbers and there's only two SKUs on top.
24 So I'm not sure why this got jazzed up

1 when she printed it. I think there -- it
2 looked like there was an image, is what I
3 look on the front here.

4 MS. BAIG: Again, I guess I
5 would ask counsel to take a look
6 at this document and just see if
7 it was produced in a way that was
8 not the way that it was initially
9 kept.

10 MR. ROTH: We'll take a look
11 at it.

12 MS. BAIG: Thank you.

13 BY MS. BAIG:

14 Q. And do you see on Page 2, in
15 the paragraph that begins, "My plan right
16 now"?

17 A. Yep.

18 Q. She states, her plan right
19 now is, "To ship the next monthly order
20 to all customers who have outstanding
21 orders on December 1st up to the amount
22 that is their normal monthly order."

23 A. Okay.

24 Q. "If customers have open

1 orders in excess of their normal monthly
2 order, then we will ship out the next
3 monthly allocation on January 4th."

4 Do you see that?

5 A. Yep.

6 Q. Is it your understanding as
7 to whether -- is it your understanding
8 that that was the process in place for
9 shipping excessive orders?

10 A. I wouldn't -- I wouldn't
11 know that.

12 Q. You don't know whether the
13 process in place at that time was to wait
14 a month and then ship the excessive
15 orders?

16 MR. LUXTON: Objection to
17 form.

18 THE WITNESS: I -- I don't
19 know the -- I didn't write this
20 e-mail, so it's hard for me to
21 know. She didn't write the
22 history. It looks like we had a
23 backorder.

24 So if you read this, it's

1 backorders. So she's allocating
2 based on a back order.

3 So this is -- this is why
4 this e-mail is sent.

5 BY MS. BAIG:

6 Q. You don't know whether or
7 not that was your process in place at the
8 time or not; is that right?

9 MR. LUXTON: Objection to
10 form.

11 THE WITNESS: Process in
12 place for what?

13 BY MS. BAIG:

14 Q. For shipping excessive
15 orders?

16 A. Again --

17 Q. Or for shipping orders that
18 exceed their normal monthly ordering
19 pattern?

20 A. I do not. I -- again, we'd
21 have to look at the process -- the actual
22 documented process, not just look at this
23 one e-mail that appears to be a backorder
24 situation.

1 (Document marked for
2 identification as Exhibit
3 Allergan-Perfetto-13.)

4 BY MS. BAIG:

5 Q. I'll have this document
6 marked as Exhibit 13. Bates-stamped
7 Acquired_Actavis_00218780 through 18786.

8 It begins as an e-mail from
9 you to Doug Boothe dated February 2,
10 2011, do you see that?

11 Do you see at the bottom of
12 the last page where the e-mail chain
13 begins from Rachelle Galant to you and
14 others, the subject is 100,000 bottles
15 today. Do you see that?

16 Well, actually the subject
17 is oxy IR 30 milligrams orders: 100,000
18 bottles today. Do you see that?

19 A. Okay. The last page?

20 Q. Second to last page.

21 Do you know who Noemi Rebeco
22 is?

23 A. I knew the name. She worked
24 in the plant. I don't know what she did.

1 Q. How about Weldon Chin?

2 A. He -- he was a plant person.

3 Q. And Doug Plassche?

4 A. Plant -- he -- he was also
5 a -- man -- when I say plant,
6 manufacturing person.

7 Q. Okay. So they are all
8 Actavis employees?

9 A. Yes.

10 Q. And do you see that Rachelle
11 Galant is indicating to Noemi and Weldon,
12 "I already spoke with Noemi a moment ago,
13 but we received orders in today for oxy
14 30 milligrams 100,000 bottles."

15 A. Yes.

16 Q. "74,000 of those bottles
17 were orders from Walgreens."

18 Do you see that?

19 A. I do.

20 Q. And she goes on to state
21 that "for oxy IR, 15 milligrams, orders
22 today equaled 38,000 bottles."

23 Do you see that?

24 A. Yes.

1 Q. And she states, "There
2 appears to be a market shortage out
3 there"?

4 A. That's what she says.

5 Q. "And we absolutely need API
6 inhouse immediately to help us fill our
7 demand."

8 Do you see that?

9 A. I do.

10 Q. What is API?

11 A. Active pharmaceutical
12 ingredient.

13 Q. And she is basically asking
14 for an expedited release; is that right?

15 A. She's saying any expediting
16 you can do the next release would be
17 appreciated.

18 Q. The next release of oxy
19 30 milligrams would be appreciated,
20 right?

21 A. Yes. Yep.

22 Q. "We only have 40,000 bottles
23 available," right?

24 A. That's what it reads.

1 Q. Okay. And you see, from
2 you, you write, "I spoke with Mike Allen
3 today."

4 Who's Mike Allen?

5 A. Allen was -- was a
6 purchasing person at Walgreens at the
7 time.

8 Q. And did you communicate with
9 him because you were trying to ascertain
10 a reason for their increased usage?

11 MR. ROTH: Objection to
12 form.

13 THE WITNESS: Can you repeat
14 the question?

15 BY MS. BAIG:

16 Q. Did you communicate with him
17 because you were trying to obtain a
18 reason for their increased usage?

19 A. Based on this e-mail it
20 appears I reached out to him to see what
21 the -- why they had increased their
22 usage.

23 Q. And you wrote here that "he
24 will send me a response in writing on

1 increased usage," correct?

2 A. That's what I wrote.

3 Q. And then you went on to
4 state, "It will also help to show the
5 crazy pulls"?

6 A. Yes.

7 Q. Does that mean excessive
8 order -- or -- or increased order? What
9 did you mean by crazy pulls?

10 MR. ROTH: Object to form.

11 THE WITNESS: Increased
12 orders is -- is how I would define
13 it.

14 BY MS. BAIG:

15 Q. Okay. And then if you move
16 further up, you see -- in the e-mail
17 chain, you see from Rachelle Galant to
18 you and others, it states, "Based on
19 Walgreens' six-month historical average
20 with Actavis on the oxy IR tabs, we are
21 concerned that the January shipments plus
22 open orders are tracking higher than
23 expected," correct?

24 A. That's what it reads.

1 Q. And then it provides the
2 numbers of the orders. Do you see that?

3 A. I do.

4 Q. And the six-month average
5 was 54,124 for oxycodone at the
6 15-milligram level?

7 A. That's what it says.

8 Q. And what does the
9 126 percent figure refer to?

10 A. It says, "Current month
11 ship" -- "shipment tracking."

12 Q. Do you know what that means?

13 A. I don't.

14 Q. You don't know?

15 What's ship plus open mean?

16 A. The orders we shipped plus
17 the open orders.

18 Q. So that would be 180 percent
19 of the six-month average?

20 A. I don't know. We'd have to
21 ask Rachelle, she wrote the e-mail.

22 Q. Sure. But your long history
23 and experience of working at Actavis, how
24 do you read this e-mail?

1 MR. LUXTON: Objection to
2 form.

3 THE WITNESS: Again, I'd be
4 speculating. I didn't write the
5 e-mail. I didn't -- I didn't -- I
6 don't have a calculator here to
7 figure out the numbers.

8 BY MS. BAIG:

9 Q. So you have no understanding
10 of what -- what this e-mail means as you
11 read it today?

12 MR. LUXTON: Objection to
13 form.

14 THE WITNESS: I -- I have an
15 understanding.

16 BY MS. BAIG:

17 Q. What is your understanding?

18 A. I have an understanding that
19 they -- they are ordering higher than
20 their six-month average. And it's
21 creating an e-mail chain.

22 Q. And you had asked her for an
23 e-mail that you could send to Walgreens,
24 correct?

1 A. Yes.

2 Q. And does she write -- write
3 one then in her response to you? Is that
4 what this is? "Please help us understand
5 the dynamic that Walgreens is seeing in
6 their pharmacies to account for this
7 higher demand. We also would like to
8 know what measures are being put in place
9 by Walgreens to help control abuse of
10 this product. We are committed to
11 serving Walgreens to the best of our
12 ability."

13 Do you see that?

14 A. I do.

15 Q. Do you know if you
16 ultimately sent an e-mail like that to
17 Walgreens?

18 A. I don't know at this time.
19 I'm looking at the chain to see if it
20 references it.

21 I don't know if I sent in
22 2011, an e-mail -- do you have
23 documentation that shows I sent the
24 e-mail?

1 Q. I'm -- I'm just looking at
2 this document that I have in front of me.

3 A. Okay.

4 Q. And trying to understand it.

5 Do you -- do you have a
6 recollection of sending an e-mail to
7 Walgreens asking them to explain their
8 increased demand?

9 A. I don't at this time.

10 Q. Okay. And -- but your
11 response to her, you can see, was that,
12 "I'm thinking we need to soften a
13 little."

14 Do you see that?

15 A. I do.

16 Q. And why -- why would you
17 suggest to soften it?

18 A. I don't -- I don't know at
19 this time why I would say that.

20 Q. Was that just because you
21 wanted to preserve your relationship with
22 Walgreens and you didn't want to send
23 something that was too -- too strong or
24 hard for them about their increased

1 order?

2 MR. ROTH: Objection to
3 form.

4 MR. LUXTON: Objection to
5 form.

6 THE WITNESS: I don't know
7 today what I meant in 2011 with
8 that comment.

9 BY MS. BAIG:

10 Q. And what was Michael
11 Dorsey's position then?

12 A. He was a sales rep for me.

13 Q. And so Michael Dorsey
14 responds by providing you some historical
15 figures; is that right?

16 A. Apparently.

17 Q. And Rachelle Galant then
18 responds, "I would want to understand
19 where the demand is coming from to help
20 give us justification from a DEA
21 perspective. I'm not seeing this swing
22 in demand on other pharmacy customers."

23 Do you see that?

24 A. Yes.

1 Q. And then do you see at the
2 top of Page 2, Michael Dorsey writes an
3 e-mail stating, "If our sales to
4 Walgreens are up 80 percent from 2009 to
5 2010, but their representation of the
6 total market share was from 12 percent to
7 14 percent," and he asks, "Is this
8 correct Rachelle? If so, then what has
9 the total market grown?"

10 Do you see that?

11 A. I do.

12 Q. Were you aware at the time
13 that your sales to Walgreens were up
14 80 percent from 2009 to 2010?

15 A. At this time I don't recall
16 that kind of growth.

17 Q. But you don't have any
18 reason to doubt that based on -- on what
19 you're reading here, do you?

20 A. I don't -- you know, again,
21 without looking at data, I'm going off of
22 Mike Dorsey's numbers. And if he did the
23 calculation right, I'd have to -- I'd
24 have to make that assumption. I'm -- I'm

1 not sure he did the calculation right.

2 So we'd have to look at the -- the data.

3 Q. Okay. And you see Rachelle
4 Galant's response is that "overall market
5 has grown an estimated 53 percent from
6 2009 to 2010."

7 A. Okay.

8 Q. And she writes, "576 to
9 882 million."

10 A. Okay.

11 Q. And the title of that is
12 "Walgreens 2009 to 2010 oxycodone."

13 A. Okay.

14 Q. Did you have an
15 understanding at the time that oxycodone
16 growth was pretty significant?

17 MR. ROTH: Object to form.

18 BY MS. BAIG:

19 Q. In the overall market?

20 MR. ROTH: Object to form.

21 THE WITNESS: 2009 to '10?

22 I probably knew there was growth.

23 But I don't know if, sitting here

24 today I knew the actual

1 percentages.

2 BY MS. BAIG:

3 Q. But you knew it when she
4 sent it to you in or about February of
5 2011, correct?

6 MR. ROTH: Same objection.

7 THE WITNESS: I mean, I
8 don't know it -- today I don't
9 know it. I -- if I read this
10 e-mail, and I read it clearly, it
11 was documented. But I don't know
12 if I -- if I -- if you asked me in
13 2011 if I knew what the percentage
14 growth, I probably wouldn't know
15 the actual number.

16 BY MS. BAIG:

17 Q. But you would have known
18 that there was significant growth for
19 oxycodone at that time --

20 MR. LUXTON: Objection to
21 form.

22 BY MS. BAIG:

23 Q. -- in the -- in the overall
24 market, correct?

1 MR. ROTH: Asked and
2 answered.

3 THE WITNESS: I'm not sure
4 if at this point whether --
5 whether I knew there was that type
6 of growth. I'm not sure.

7 BY MS. BAIG:

8 Q. And she suggest here that
9 the estimated numbers were using Wolters
10 Kluwer's data; is that right?

11 A. Yes.

12 Q. And that the IMS data was
13 showing 51 percent, correct?

14 A. Yes.

15 Q. So from her perspective, she
16 was seeing that that is good validation
17 of the figures, correct?

18 A. That's what she wrote.

19 Q. And did Actavis have access
20 to both the Wolters Kluwer's data and the
21 IMS data?

22 A. I believe so.

23 Q. And do you know if Actavis
24 was paying for that data?

1 A. I believe we paid for that
2 data.

3 Q. And what did the data show
4 generally?

5 A. I -- I would just give you a
6 top line.

7 Q. Yeah, that's fine.

8 A. IMS is market share of the
9 generics. And then Wolters Kluwer, I
10 never dealt with. I don't know what the
11 market -- you'd have to ask somebody in
12 marketing.

13 Q. And why did you purchase
14 that data?

15 A. To manage our business.

16 Q. So you could have an
17 understanding of Actavis' market share
18 for various of its products?

19 A. For all of our products.

20 Q. And part of your response up
21 above, you state, "The price point is
22 half of what you thought."

23 Do you know what you're
24 referring to there?

1 A. Doug probably had a price
2 for what he thought the product was
3 selling for, and it's half of what he
4 thought.

5 Q. The oxycodone?

6 A. Yes.

7 Q. Okay. And what does that
8 mean, the next line, "It's still 30s on
9 GP at WAGS"?

10 A. 30 percent margin.

11 Q. On GP, what's GP?

12 A. Gross profit.

13 Q. And WAGS?

14 A. Walgreens.

15 Q. In the 50s at HD. What's
16 that?

17 A. 50 percent gross profit
18 compared to 30 at Walgreens.

19 Q. And HD is another customer,
20 HD Smith, correct?

21 A. Yes.

22 Q. And then you go on to say,
23 "We want the business. It's a needle
24 mover."

1 What were you saying was the
2 needle mover?

3 A. Oxy was a -- was a key
4 product for us. It was an important
5 product. We were -- it wasn't a product
6 that we were -- that we were selling at
7 \$100,000 a year. It was a -- one of the
8 top 20 products, let's say.

9 (Document marked for
10 identification as Exhibit
11 Allergan-Perfetto-14.)

12 BY MS. BAIG:

13 Q. Let's have this document
14 marked as Exhibit 14. It's a document
15 that's Bates-stamped ACTAVIS_524986
16 through 525000. You can see we have the
17 same issue in terms of certain numbers
18 that are identified, but they don't look
19 like they've been produced in a form --

20 A. Yeah, they are --

21 Q. -- in which they were
22 initially created.

23 MS. BAIG: So I would just
24 ask if counsel could check.

1 MR. ROTH: Yeah, we looked
2 at the other one. I think it's
3 just the e-mail signature image
4 that's the attachment. But we'll
5 double-check this again too.

6 MS. BAIG: Sure. But do you
7 have an e-mail in which these
8 figures are produced in chart form
9 and not just in a long string,
10 because you can't really determine
11 what they are or what they signify
12 in the form that they've been
13 produced.

14 MR. ROTH: I don't believe
15 so. But we will look at that.

16 MS. BAIG: Okay. Thank you.

17 THE WITNESS: This is --

18 MR. ROTH: Right, and this
19 is a similar issue, where it
20 should have been -- we did produce
21 this document with a different
22 Bates stamp.

23 MS. BAIG: Okay. We can
24 take that issue up.

1 BY MS. BAIG:

2 Q. And you see the subject line
3 of this e-mail from Rachelle Galant to
4 you and others on March 22nd, 2011, is
5 "Opti-Source, oxy IR orders."

6 Do you see that?

7 A. Mm-hmm.

8 Q. And Opti-Source was a
9 customers of yours; is that right?

10 A. It was, yes.

11 Q. And if you turn to the
12 second-to-last page you see, for example,
13 it looks like a chart that is not created
14 in chart form. But you have customer
15 contact procedure, date, strength,
16 six-month shipment average, current month
17 ship, Actavis sales team member, date,
18 form of communication.

19 Does this look like a form
20 that would have been created to address
21 an order that was flagged as either being
22 an order of interest or a suspicious
23 order?

24 A. I don't know. I don't

1 recall this specific form.

2 Q. But do you remember
3 generally that part of the process was to
4 go back and get a reason for -- from the
5 customer for any higher volume in orders?

6 A. I believe that was the
7 process that marketing would go back and
8 get a reason from the customer.

9 Q. And you see that's part of
10 the second-to-last page, "Reason given
11 for higher volume in orders"?

12 Do you see that?

13 A. Yeah.

14 Q. And then you see on the page
15 before that, it says, "Oxycodone IR
16 tablets and suspicious order tracking."

17 Do you see that?

18 A. I just have a page with oxy
19 IR tablets and suspicious order tracking.

20 Q. Yes. That's all I have.

21 A. Oh, okay. And the
22 customer's name on the bottom.

23 Q. Opti-Source?

24 A. Right.

1 Q. And do you see on the next
2 page, moving forward, there's an e-mail
3 from Rachelle Galant to you and Michael
4 Dorsey --

5 A. Yep.

6 Q. -- cc'g Jinping and Nancy
7 Baran?

8 A. Yep.

9 Q. And it's flagging
10 Opti-Source as excessive order. It says,
11 "Opti-Source's ordering on the
12 30-milligram oxy IR tabs is in excess of
13 their rolling six-month average."

14 Do you see that?

15 A. I do.

16 Q. It goes on to state, "Their
17 six-month average is 11,928."

18 A. Right.

19 Q. "Month-to-date, they have
20 shipped 13,896 bottles. Based on where
21 we are in the month (52 percent) this
22 falls under our SOP of suspicious order."

23 Do you see that?

24 A. I do.

1 Q. Does this suggest to you
2 that this e-mail chain was created as
3 part of the suspicious order monitoring
4 process when an order was flagged for
5 Opti-Source?

6 MR. LUXTON: Objection to
7 form.

8 THE WITNESS: It appears
9 that the excess orders triggered
10 an e-mail chain that contacted the
11 sales rep.

12 BY MS. BAIG:

13 Q. Triggered an e-mail chain
14 that what?

15 A. Contacted the sales rep to
16 get involved with this --

17 Q. That required the sales rep
18 to contact the customer and get a reason
19 for the excessive order, correct?

20 A. Yes, yes.

21 Q. Okay. And that's what she's
22 referring to in the next line where she
23 states, "I know we are filling their
24 primary demand right now, but we need to

1 get a statement from them for our files."

2 Do you see that?

3 A. Yes.

4 Q. And would those letters have
5 been kept in the shared file that we
6 discussed earlier if they were received?

7 A. If they stuck to the SOP,
8 yes.

9 Q. And as you scroll through
10 the pages --

11 A. Yep.

12 Q. -- scroll forward. These
13 numbers, do these make sense to you or
14 no?

15 A. The numbers or the verbiage?

16 Q. The numbers on the --
17 there's list of numbers, 24, 24, 120,
18 Dakota Anoka. Do you know what that
19 refers to?

20 A. These are -- Opti-Source is
21 a conglomerate of distributors. These
22 are the distributors that are in the
23 Opti-Source.

24 Q. Okay. And do you know what

1 the numbers refer to?

2 A. I don't, because there's
3 no -- it's -- it's not laid out
4 correctly.

5 Q. And do you see on the first
6 page then, from Rachelle Galant, it
7 suggests that they were trying to get a
8 statement from the buying group; is that
9 right?

10 A. That's what she wrote.

11 Q. Okay. And in the last line
12 of -- of that -- of her e-mail, she
13 writes, "Of course I'm all about
14 democracy, and if this group wants to go
15 with an internal explanation, we can
16 document it and close the report."

17 Do you see that?

18 A. I do.

19 Q. Do you know whether an
20 explanation was ever received by the
21 company for the excessive order?

22 A. I don't.

23 Q. Do you know whether or not
24 the excessive order was shipped?

1 A. I don't.

2 (Document marked for
3 identification as Exhibit
4 Allergan-Perfetto-15.)

5 BY MS. BAIG:

6 Q. I'll have this document
7 marked as Exhibit 15, please. This
8 document is Bates-stamped
9 ALLERGAN_MDL_0067641 through 643.

10 MR. LUXTON: You are up to
11 15 on this?

12 MS. BAIG: Yep.

13 MR. LUXTON: All right.

14 BY MS. BAIG:

15 Q. And you see this is an
16 e-mail chain, at least beginning on the
17 first page, from Rachelle Galant to you,
18 correct?

19 A. I do.

20 Q. And again it's about
21 Opti-Source oxy IR shipments. Do you see
22 that?

23 A. I do.

24 Q. And do you see on the second

1 page it starts from Rachelle Galant to
2 Mike Dorsey, and she states, "I've been
3 seeing a higher ordering pattern for oxy
4 IR tabs recently from the Opti-Source
5 group members."

6 Do you see that?

7 A. I do.

8 Q. And she goes on to state,
9 "Several of our orders have been flagged
10 by the suspicious order monitoring as
11 excessive in quantity."

12 Do you see that?

13 A. I do.

14 Q. And she says, "Can you
15 please reach out to Rick and other
16 members if necessary to see the reason
17 for the increased orders."

18 Do you see that?

19 A. I do.

20 Q. Is this -- does this appear
21 to you to be another e-mail chain that is
22 part of the suspicious order monitoring
23 system which requires a reason to be
24 obtained from the customer before

1 shipping excessive orders?

2 A. It appears that way.

3 Q. Okay. And she goes on to
4 state, "Attached is the recent shipments.
5 You'll be able to see that we have
6 shipped a full month on oxy already for
7 the month, and we have approximately
8 20,000 bottles in open orders, mainly on
9 the oxy IR 30 milligrams."

10 Do you see that?

11 A. Mm-hmm.

12 Q. And then you see the
13 attachment that reflects -- reflects
14 those numbers?

15 A. Yes.

16 Q. Okay. And that attachment
17 comes from what data system at -- at
18 Actavis if you know?

19 A. I think we had a system
20 called Q4bis that put it in this format.
21 But that -- that would be my -- at this
22 stage my guess.

23 Q. It's Q?

24 A. Q -- Q --

1 Q. Oh, Q?

2 A. 4bis.

3 Q. Okay. And -- and what was
4 the Q4bis system?

5 A. It's -- this is the --
6 that's the user-friendly system that puts
7 data into this format.

8 Q. Is the data saved in Q4bis
9 or is it saved elsewhere?

10 A. I don't know that right now.

11 Q. And do you know at the top
12 left of this chart what MFGPRO means?

13 A. I do not.

14 Q. How about DSGM?

15 A. I do not.

16 Q. All right. But this is the
17 data that she was attaching to show that
18 Opti-Source had placed an excessive
19 order, correct?

20 A. To me this -- this is a --
21 this shows the history by month of oxy
22 tablets by bottles, but I'm not sure, it
23 doesn't say whether it's the 15 or
24 30-milligram on this slide.

1 Q. And this is what she
2 attached to -- to show that there was a
3 higher ordering pattern for oxy IR tabs
4 from the Opti-Source group members,
5 correct?

6 A. That's what it appears.

7 Q. And then do you see a little
8 further down, Michael Dorsey responds to
9 Rachelle by stating that "orders have
10 been coming in heavier due to
11 Mallinckrodt and recently Qualitest's
12 lack of shipments"?

13 Do you see that?

14 A. I do.

15 Q. Do you know why orders would
16 have been coming in heavier due to
17 Mallinckrodt?

18 A. Because they were -- they
19 were not supplying.

20 Q. Why were they not supplying,
21 do you know?

22 A. No, I do not.

23 Q. Okay. But you gather that
24 from the lack of shipments at the end, is

1 that -- is that how you're reading that?

2 A. I -- just because of what he
3 wrote.

4 Q. Okay. And then she goes on
5 to state that "we have already shipped
6 them a full month and they have another
7 month on order and are calling Sarah
8 everyday."

9 Do you see that? At the
10 very top.

11 MR. LUXTON: At the top.

12 THE WITNESS: I do.

13 BY MS. BAIG:

14 Q. And do you know whether or
15 not they actually shipped the excessive
16 order?

17 A. I don't.

18 Q. But that information would
19 be stored in the -- in the shared drive,
20 correct?

21 MR. LUXTON: Objection to
22 form.

23 THE WITNESS: It would be --
24 it should be documented somewhere

1 within the company.

2 Can we take like a
3 five-minute break.

4 THE VIDEOGRAPHER: Stand by,
5 please. Remove your microphones.
6 The time is 3:36 p.m. Off the
7 record.

8 (Short break.)

9 THE VIDEOGRAPHER: We are
10 back on the record. The time is
11 3:45 p.m.

12 (Document marked for
13 identification as Exhibit
14 Allergan-Perfetto-16.)

15 BY MS. BAIG:

16 Q. We'll have the next document
17 marked as Exhibit 16.

18 A. Yep.

19 Q. This document begins -- is
20 an e-mail from Mike Dorsey to Rachelle
21 Galant, May 24th, 2012, and it's
22 ACTAVIS_0288356 through 288361.

23 And you can see, if you look
24 a few pages in, that you're on a portion

1 of this string. And it appears to be
2 another example of the types of documents
3 that we've been looking at, which is an
4 order that was flagged as excessive, for
5 which additional documentation was being
6 discussed.

7 Do you see if you look at
8 the second-to-last page at the bottom,
9 from Mike Dorsey to Rachelle, it's
10 titled, "Smith Drug oxycodone
11 30-milligram needs."

12 Do you see that?

13 A. I do.

14 Q. And Mike Dorsey is saying,
15 "Smith Drug is requesting another 6,000
16 bottles of 30 milligrams."

17 Do you see that?

18 A. I see that.

19 Q. And then in parens, he has
20 "(2,400, 1,200, 2,400 in their respective
21 DCs) ."

22 Do you know what that refers
23 to?

24 A. Distribution center. So --

1 Q. I see. So they have three
2 different distribution centers?

3 A. It appears so.

4 Q. Okay. And if you move
5 further up the chain, it states that,
6 "Smith Drug is requesting 6,000 in
7 additional bottles of oxy 30 milligrams
8 this month."

9 Do you see that?

10 A. Yes.

11 Q. And a little further down it
12 says, "From Actavis, Smith Drug's average
13 purchase volume on the 30-milligram is
14 averaging 11,500 bottles a month. This
15 month they received 9,500 bottles MTD."

16 Do you see that?

17 A. Yes.

18 Q. What's MTD?

19 A. Month to date.

20 Q. In my world it's motion to
21 dismiss.

22 A. Motion to dismiss.

23 Q. Okay. "In April, they only
24 ordered and received 5,500 bottles."

1 Do you see that?

2 A. I do.

3 Q. "My question is, can we ship
4 Smith Drug an additional 6,000 bottles,
5 30-milligrams, as they are requesting,
6 and document it as market shortage using
7 justification that they underordered in
8 April?"

9 Do you see that?

10 A. I do.

11 Q. And if you move to the prior
12 page, your response is, "I say do it."

13 Do you see that?

14 A. I do.

15 Q. And then if you move to the
16 prior page, you see from -- from you to
17 Nancy Baran and others, "I would ask for
18 documentation to support your concerns.
19 Full disclosure, which I presume the
20 customer would do to cover both of them
21 and us."

22 Do you see that?

23 A. I do.

24 Q. Do you know whether you got

1 documentation on this particular
2 excessive order?

3 A. I don't.

4 Q. And do you see just above
5 that, there is an e-mail from Donna
6 Pruitt at Smith Drug with the subject
7 "Product Shortage"?

8 A. Right above my e-mail,
9 above -- asking for documentation?

10 Q. Yeah, at the top of that
11 page. The name Donna Pruitt is on the
12 bottom of the prior page.

13 MR. LUXTON: Bottom of 57.

14 THE WITNESS: Oh, oh, I see
15 why I couldn't -- I couldn't
16 figure it out. Okay.

17 BY MS. BAIG:

18 Q. So you see that Donna Pruitt
19 from Smith Drug is --

20 A. Yeah, I just want to read
21 what she wrote.

22 Q. -- is providing a reason.
23 She basically states that she has a
24 supplier of oxycodone 30 milligrams that

1 is backordering product.

2 Do you see that?

3 A. I do.

4 Q. And then Michael Dorsey --
5 sorry -- Rachelle Galant's response to
6 that is a question mark, "Is she saying
7 that she normally orders 6,700 a month
8 with supplier M and 8,700 a month with
9 us?"

10 Do you see that?

11 A. Yes.

12 Q. And Rachelle Galant
13 responds, "Yes, but her numbers are off."

14 Do you see that, at the
15 bottom of the first page?

16 A. Yeah. I think that's from
17 Mike Dorsey.

18 Q. Yes. You're right, to
19 Rachelle Galant -- to Rachelle Galant.

20 A. Yeah.

21 Q. And do you know whether or
22 not this order was ultimately shipped?

23 A. I don't recall.

24 Q. And do you see from Rachelle

1 Galant, halfway up the page, it says, "I
2 don't want to be the one who points it
3 out, but her e-mail closes the door on
4 getting extra inventory from us. We've
5 already shipped Smith's full requirements
6 on oxy 30 milligrams."

7 Do you see that?

8 A. I do.

9 Q. And you don't know whether
10 it was shipped or not, correct?

11 A. Not -- not in two -- not
12 without looking at --

13 Q. Sure.

14 A. -- have Nancy Baran looking
15 at the actual orders that went out.

16 Q. So you don't have an -- and
17 don't have an independent recollection of
18 it being halted, correct?

19 A. I don't know if it was
20 shipped or not shipped or -- or -- I
21 don't know what individual orders did.

22 Q. But that is information that
23 should have been saved in the shared
24 drive pursuant to the SOP, correct?

1 A. It should be shared
2 somewhere with -- somewhere within --
3 within Actavis' universe of orders.

4 Q. And I believe you testified
5 earlier that you have not had
6 communications with anyone at the DEA --

7 A. I have not.

8 Q. -- about anything, right?

9 A. I've never -- I've never
10 spoken to anybody that I can recall right
11 now at the DEA.

12 Q. And have you been made aware
13 of Actavis' communications with the DEA
14 about the Controlled Substance Act?

15 A. I recall that there was a
16 meeting with the DEA that I wasn't at.

17 Q. Okay. What do you recall
18 about learning about that meeting?

19 A. I just recall that Nancy was
20 at a DEA meeting. I'd have to look at
21 documents to know what was -- what was
22 the -- what was discussed.

23 Q. Do you recall ever learning
24 that the DEA had a meeting with Actavis

1 about the -- the influx of opioids into
2 the state of Florida?

3 MR. ROTH: Object to form.

4 THE WITNESS: I don't -- I
5 don't recall a specific meeting.
6 I know they had a DEA meeting. I
7 don't recall a specific meeting
8 on -- on that subject.

9 BY MS. BAIG:

10 Q. Do you remember hearing --
11 you don't remember hearing about a
12 meeting on that subject?

13 A. I'm sure right now I don't
14 have the details, but I'm sure I was
15 briefed by Nancy.

16 (Document marked for
17 identification as Exhibit
18 Allergan-Perfetto-17.)

19 BY MS. BAIG:

20 Q. Let's have this document
21 marked as Exhibit 17. It's Bates-stamped
22 Actavis 238164.

23 A. Okay.

24 Q. It begins with an e-mail

1 from you to Michael Clarke and Doug
2 Boothe, dated September 13, 2012, with
3 the subject DEA meeting. Do you see
4 that?

5 A. Okay, yeah.

6 Q. And you were not at this DEA
7 meeting that's referenced, correct?

8 A. I was not at that DEA
9 meeting that's referenced.

10 Q. Did you understand that
11 there had been a tough meeting with the
12 DEA about the status of where the
13 oxycodone pills were ending up in
14 Florida?

15 MR. ROTH: Object to form.

16 THE WITNESS: Can you repeat
17 that?

18 BY MS. BAIG:

19 Q. Did you ever have an
20 understanding that Actavis had had a
21 tough meeting with the DEA about the
22 status of where Actavis' oxycodone pills
23 were ending up in Florida?

24 MR. ROTH: Object to form.

1 Mischaracterizes the e-mail.

2 MR. LUXTON: Objection to
3 form.

4 THE WITNESS: I knew they
5 had a meeting. I don't -- I
6 didn't -- I didn't hear the
7 adjective "tough."

8 BY MS. BAIG:

9 Q. Okay. Do you recall hearing
10 that the DEA had lectured -- had lectured
11 Actavis regarding the extent to which
12 oxycodone was being diverted and abused
13 in Florida?

14 MR. LUXTON: Objection to
15 form.

16 THE WITNESS: I -- as I sit
17 here today, I don't recall being
18 lectured by anybody on this, or
19 that we got lectured by the DEA.

20 BY MS. BAIG:

21 Q. Well, you weren't at the
22 meeting. But you --

23 A. I mean that we --

24 Q. -- you don't recall hearing

1 that Mike Clarke or anybody else got
2 lectured by -- by the DEA either; is that
3 right?

4 A. I -- I don't remember being
5 briefed by Mike Clarke -- Mike Clarke, is
6 that his -- I didn't deal with -- Michael
7 Clarke, I didn't deal with him very much
8 with him at all. I would have been
9 briefed by Nancy.

10 Q. Okay. But you see this
11 e-mail here from Mike Clarke to you and
12 Doug Boothe, correct?

13 A. I do.

14 Q. And it says here, "I just
15 left you a voicemail with some detail,
16 but we should talk."

17 Do you see that?

18 A. I do.

19 Q. And he goes on to state,
20 "The DEA meeting was essentially a
21 lecture on the status of where our
22 oxycodone pills are ending up in Florida,
23 using market data and DEA license numbers
24 to track our product to specific Florida

1 towns and pharmacies in 2010, '11 and
2 '12."

3 Do you see that?

4 A. Yes.

5 Q. And he goes on to state,
6 "They spent about 90 minutes and 100
7 slides walking us through the number of
8 pills dispensed in Florida, compared to
9 some other states and the national
10 averages to make the case that a
11 significant number of high volume of
12 pharmacies or both" -- sorry. "A
13 significant number of high volume of
14 scripts in Florida must be directed
15 towards inappropriate uses, either
16 through bad doctors, shady pharmacies or
17 both."

18 A. Okay.

19 Q. He goes on to state, "They
20 are challenging all manufacturers and
21 distributors to put controls in place to
22 handle the potential diversion of
23 oxycodone. Walgreens and Happy Harry
24 were pharmacies with particularly high

1 numbers of oxy scripts in remote sections
2 of Florida."

3 Do you recall being briefed
4 that Walgreens and Happy Harry were
5 pharmacies with particularly high oxy
6 scripts in Florida?

7 MR. LUXTON: I'll just
8 object because I think you missed
9 a line.

10 But go ahead and answer.

11 THE WITNESS: Briefed by
12 whom?

13 BY MS. BAIG:

14 Q. Well, in this e-mail by
15 Michael Clarke or by anybody else.

16 A. I -- I don't recall being
17 briefed by Michael Clarke.

18 Q. Okay. Do you recall
19 receiving this e-mail?

20 A. No, but I'm sure I -- I got
21 this e-mail.

22 Q. Okay. Do you recall talking
23 about the subject matter of this e-mail
24 with anybody at Actavis?

1 A. Today as I sit here, I don't
2 recall conversations on this -- on this
3 subject matter.

4 Q. Do you recall being aware
5 generally that the DEA had -- had a
6 meeting with Actavis in which they
7 briefed -- briefed Actavis about a high
8 number of -- of scripts in Florida that
9 were being directed towards inappropriate
10 uses?

11 A. I -- I knew they had a
12 meeting. I -- today I can't remember
13 whether -- what the details of the
14 meeting were, other than what I read in
15 this e-mail.

16 Q. Do you recall being aware
17 that there was a problem in Florida with
18 oxy abuse?

19 A. I was aware via -- via the
20 newspaper and magazines that several
21 wholesalers and Walgreens and I believe
22 CVS had -- had gotten fines from the DEA.
23 That was public information in newspapers
24 and trade magazines.

1 Q. And when was that?

2 A. I believe in -- in '12. It
3 could have been -- yeah, I believe in
4 '12. It could have been in the -- in
5 the -- no, I think -- I don't think it
6 went into '13. I think it was just
7 primarily '12. Could have been the end
8 of '11. There was documentation in
9 public record.

10 Q. Do you recall Actavis taking
11 any action as a result of this DEA
12 meeting to prevent diversion of oxycodone
13 in Florida or anywhere else?

14 A. We had our suspicious order
15 monitoring system, and then we were
16 continuing to enhance it. So that would
17 have been our -- that was our process, to
18 continually -- to improve the actual
19 system that we had.

20 Q. As you sit here today, can
21 you -- can you identify any enhancements
22 that happened as a result of or after
23 this DEA meeting?

24 MR. ROTH: Object to form.

1 THE WITNESS: I can't.

2 BY MS. BAIG:

3 Q. Did you ever hear that your
4 downstream customers were targeting pill
5 mills in order to increase sales?

6 A. Who are downstream? Who are
7 you --

8 Q. Your customers' customers.

9 A. My customers' customers were
10 targeting pill mills? I don't remember
11 this comment.

12 Q. Did you ever hear that --
13 are you familiar with the concept of pill
14 mills and what a pill mill is?

15 A. Can you define that?

16 Q. I'm asking you if you have
17 an understanding.

18 A. Oh.

19 Q. I have my definition, but
20 I'm wondering if you, you know, based on
21 your -- your experience at the company,
22 if you have an understanding of what a
23 pill mill is.

24 A. Pill mill. I've read that

1 term in the paper or in -- in articles
2 about this. And I think it's doctors'
3 offices that dispense -- dispensed
4 controlled drugs.

5 Q. All doctors' offices that
6 dispense controlled -- controlled drugs,
7 is that --

8 A. I'm trying to go off a
9 memory of an article I read that
10 described that term, and I thought it was
11 in Wall Street, years and years ago,
12 right around this time.

13 Q. And did you ever hear of the
14 notion that sales reps would target pill
15 mills in order to increase sales?

16 A. Not my sales reps.

17 Q. Anywhere. I'm just saying
18 have you heard that that happened
19 generally.

20 A. Oh who -- whose -- whose
21 sales reps?

22 Q. Anybody's. Have you heard
23 of that tactic for increasing sales?

24 A. I -- I'm not familiar with

1 how -- I heard the term in Wall Street
2 Journal. I believe it was Wall Street.

3 I'm not sure how these
4 people would have gotten -- my -- my
5 sales team was not selling to doctors'
6 offices or calling on doctors' offices.

7 Q. Do you recall who your
8 biggest and best oxy sellers' sales reps
9 were?

10 A. No.

11 Q. Who designed the sales
12 targets for your sales reps?

13 A. The -- the targets, my
14 target is set for the generic, the entire
15 generic team, the sales team. And then
16 marketing I would -- would allocate based
17 on accounts, which sales reps had which
18 accounts. And it would be allocated that
19 number, the top number would be allocated
20 to the -- to the -- I think we had four
21 reps.

22 Yeah, we had four reps. So
23 we split it up based on the accounts and
24 based on the projected volume for the

1 upcoming year. So that was done in
2 coordination with my marketing folks.

3 Q. And Doug Boothe designed
4 your sales targets, correct?

5 A. Designed is a --

6 Q. Well, created.

7 A. Gave me my sales targets.

8 Q. Okay. Do you think that
9 he's not the one that developed what
10 those targets should be, was there
11 somebody else that did that?

12 A. I think sales targets has
13 come down from where the corporate
14 targets are.

15 Q. Okay. So who -- who creates
16 those?

17 A. So whoever the corporate
18 office was at Actavis at the time.

19 Q. And who was that?

20 A. Depends what year.

21 Q. Well, when you started?

22 A. Alpharma or?

23 Q. When you started at Actavis.

24 A. When I started at Actavis,

1 like when we got -- so that would have
2 been based out of Iceland. They would
3 have given Doug a number for North
4 America, and then he would have given me
5 a target for the generic portion of the
6 U.S.

7 Q. Okay. And then at the end
8 of your tenure there, who would have done
9 it then?

10 A. Claudio Albrecht was the
11 CEO.

12 Q. The CEO of?

13 A. Actavis. Albrecht --
14 Albrecht.

15 Q. And she was the person --

16 A. No, he, Claudio. Claudio.

17 Q. He was the person that would
18 have designed the sales targets for your
19 group?

20 A. No. He would have set the
21 corporate number out of Switzerland then.
22 Doug would have gotten his number, his
23 target, his negotiated target -- I'm just
24 going through the process -- for North

1 America, because he was North America
2 head. Then he would have given me my
3 target for the generic portion of the
4 business.

5 Q. Okay. And then you would
6 give your sales reps their targets based
7 on what your target was, correct?

8 A. Based on their account base.

9 Q. Based on what?

10 A. Their account -- the
11 accounts that they cover. Each rep has
12 accounts. So you would base it on the
13 account that they are managing.

14 Q. Based on both their account
15 base and what your ultimate target was,
16 correct?

17 A. Right.

18 Q. Are you aware that their
19 targets generally increased over the
20 years while you were there for selling
21 opioids, generic opioids?

22 MR. LUXTON: Objection to
23 form.

24 THE WITNESS: Again, it

1 would depend on the year. We did
2 have the one year we discussed
3 earlier with the recall that we
4 lost half -- probably half the
5 line.

6 BY MS. BAIG:

7 Q. Apart from that, are you
8 aware that the sales targets generally
9 increased during your tenure for your
10 sales reps for generic opioids?

11 MR. LUXTON: Same objection.

12 THE WITNESS: I would
13 have -- I would have to look at
14 our -- at our year by year. There
15 would be years that there would be
16 increases. It could be flat in
17 certain years. I'd have to
18 look -- I'm sure we have this
19 documentation -- and look at each
20 year and each product.

21 BY MS. BAIG:

22 Q. And were the sales reps,
23 were they offered bonuses as part of
24 their compensation?

1 A. Yes.

2 Q. Were those bonuses in part
3 based on whether or not they met their
4 sales targets?

5 A. Part of it, yes.

6 Q. As VP of generic sales, you
7 understood that it was your job to do
8 what you could to drive generic sales for
9 the company, correct?

10 MR. LUXTON: Objection to
11 form.

12 THE WITNESS: Yes.

13 BY MS. BAIG:

14 Q. And what opioids were you
15 responsible for increasing sales for? Do
16 you recall?

17 MR. LUXTON: Object to form.

18 THE WITNESS: Can you repeat
19 that question.

20 BY MS. BAIG:

21 Q. What opioids -- opioid
22 products were you responsible for
23 increasing sales for?

24 MR. LUXTON: Same objection.

1 THE WITNESS: It depends on
2 the year.

3 BY MS. BAIG:

4 Q. Well, over the -- over your
5 tenure, do you recall generally what
6 opioid products you were responsible for?

7 A. I mean, not without having a
8 product catalog and going through what
9 those --

10 Q. Was oxycodone one of them?

11 A. Yes.

12 Q. Was the -- was the generic
13 brand of Kadian one of them?

14 A. The authorized generic.

15 Q. Was that one of them?

16 A. Yes.

17 Q. Was oxymorphone one of them?

18 A. Yes.

19 Q. Was fentanyl one of them?

20 A. For a time, and then we
21 discontinued fentanyl.

22 Q. And was oxy ibuprofen one of
23 them?

24 A. Yes.

1 Q. And your bonus was tied in
2 part to your ability to increase sales
3 for those products; is that right?

4 MR. ROTH: Object to form.

5 THE WITNESS: Can you repeat
6 the question?

7 BY MS. BAIG:

8 Q. Your bonus was tied in part
9 to your ability to increase sales for
10 those products; is that right?

11 MR. ROTH: Same objection.

12 THE WITNESS: My bonus was
13 tied to making my target for an
14 aggregate of all the products for
15 the U.S.

16 BY MS. BAIG:

17 Q. Which included those
18 products, correct?

19 MR. ROTH: Same objection.

20 THE WITNESS: Yes.

21 BY MS. BAIG:

22 Q. And I think you testified
23 that you didn't recall what your bonus
24 was. But you do recall that you received

1 one each year; is that right?

2 A. Excuse me.

3 Q. I think you testified that
4 you couldn't recall what your bonus was
5 each year. But do you recall that you
6 did, in fact, receive one each year while
7 you were at Actavis?

8 A. I will answer that most
9 years. I can't answer definitely that I
10 received it every year.

11 Q. Okay. And what marketing
12 tools did Actavis use to drive sales of
13 these generic products while you were
14 there?

15 MR. LUXTON: Objection to
16 the form.

17 THE WITNESS: We -- we
18 don't -- we don't market products.
19 We sell generics. We don't use
20 marketing. We actually don't use
21 promotion.

22 We use -- because if you
23 look at generics, we're all the
24 same product. So we use quality,

1 product supply, and pricing
2 primarily to sell our products.

3 BY MS. BAIG:

4 Q. So are you saying that you
5 don't use any marketing tools to sell --
6 or you didn't use any marketing tools to
7 sell your generic --

8 MR. LUXTON: Objection to
9 form.

10 BY MS. BAIG:

11 Q. -- opioid products while you
12 were at Actavis?

13 A. Because typically when you
14 think of marketing, you think of
15 promoting to the doctors with samples and
16 calling on -- in the pharmaceuticals, and
17 calling on the doctors. We don't do any
18 of that.

19 So our -- our primary job is
20 to provide an alternative to the branded
21 product at a discount to the branded
22 product on price, have good quality, good
23 supply, and that's how the reps are
24 selling, plus their relationships with

1 the accounts.

2 We don't -- we don't

3 promote --

4 BY MS. BAIG:

5 Q. Can you define --

6 A. We don't promote our
7 products. Promote -- we don't do any
8 what I would call pure promotion, like a
9 branded pharmaceutical company would do.

10 Q. So you define marketing
11 solely as -- as detailing doctors in
12 doctors' offices?

13 A. Sampling of products, trying
14 to generate prescriptions. That would be
15 the marketing of products.

16 Q. But in terms of marketing to
17 your customers, what tools did you use to
18 market your generic lines to your
19 customers?

20 MR. LUXTON: Same objection
21 as before.

22 THE WITNESS: Again, we
23 would -- we would do awareness.

24 Ads would be the very, very --

1 just awareness ads in trade
2 magazines would be the very
3 minimum thing that we would do.
4 Or awareness ads on very rare
5 occasions to physicians' offices
6 to let them know that there's an
7 alternative product available.

8 BY MS. BAIG:

9 Q. Okay. So you did awareness
10 ads. Anything else that you can think of
11 to market your generic products to your
12 customers?

13 MR. LUXTON: Objection to
14 the word "marketing." You can
15 answer.

16 MS. BAIG: The special
17 master has defined marketing as
18 anything that you do to sell your
19 product, to get people to buy more
20 of your product. So let's go with
21 that definition.

22 BY MS. BAIG:

23 Q. That's the definition that
24 I'm using.

1 A. We don't -- we don't use any
2 promotion to say -- I mean, it's a very
3 unique situation that we're selling on
4 our relationship, the quality of the
5 company, the quality of the product, and
6 distribution. And that's how we sell.
7 We don't -- we don't sell based on --
8 based on sampling or doing ads on TV.
9 That's what I call marketing.

10 Q. Didn't you testify earlier
11 that you had a marketing department that
12 was reporting to you?

13 A. I do have a marketing
14 department that's reporting to me, yes.

15 Q. When you were at Actavis?

16 A. Yes.

17 Q. Okay. And that marketing
18 department was marketing generic drugs,
19 correct?

20 MR. LUXTON: Objection to
21 form.

22 BY MS. BAIG:

23 Q. That was not a branded
24 marketing -- that was not a marketing

1 department that was marketing branded
2 drugs. That was a marketing department
3 that was marketing generic drugs; is that
4 right?

5 A. Yes. Their -- their --
6 their job primarily is not marketing of
7 the products. It is to manage the
8 product. They're product managers, from
9 a supply standpoint. And they're
10 primarily forecasting products, and you
11 can see that over and over in e-mail.

12 They were not marketing as
13 you would think a pharmaceutical company
14 would do.

15 Q. Well, I'll tell you that the
16 definition that I'm using of marketing is
17 broader than detailing doctors. And the
18 definition that the special master in
19 this court is using for marketing is
20 broader than merely detailing doctors.

21 But why don't we take a look
22 at --

23 MR. LUXTON: That's not a
24 question, so you don't need to

1 respond.

2 BY MS. BAIG:

3 Q. -- the next exhibit. We'll
4 have it marked as Exhibit 18.

5 (Document marked for
6 identification as Exhibit
7 Allergan-Perfetto-18.)

8 BY MS. BAIG:

9 Q. This is a document that's
10 Bates-stamped ACQUIRED_ACTAVIS_022339773
11 through 0239774. I'll represent for the
12 record that there is a PowerPoint
13 presentation for this multi-page, which
14 is Bates-stamped 02239774. It appears to
15 be an e-mail from you to David Myers,
16 Rachelle Galant, and others, sent on
17 February 9, 2010, with the subject "Sales
18 Presentation."

19 Do you see that?

20 A. I do.

21 Q. And it says, "Sales meeting
22 February '10." Presumably that's 2010.

23 Do you see that?

24 A. I do.

1 Q. And do you have an
2 understanding of what this document is?

3 A. This is my sales
4 presentation at the 2010 meeting.

5 Q. At the 2010 sales meeting?

6 A. Yes.

7 Q. Okay. And who was present
8 at that meeting?

9 A. My sales reps. I don't know
10 if -- probably -- definitely my sales
11 reps. Let's see if -- I'm not sure who
12 was working for me in 2010. That's my
13 problem, whether -- I don't know if Ara
14 was at the company yet. This is going
15 back so long ago.

16 Q. And --

17 A. So definitely my sales reps.

18 Q. Was there an annual
19 salespeople meeting that you conducted?

20 A. No.

21 Q. Okay. This was just a
22 one-off sales meeting in February of 2010
23 or were there regular sales meetings?

24 A. No. We probably had three

1 sales meetings a year.

2 Q. And typically, it was just
3 you and your reps, or were there other
4 departments there as well?

5 A. No. But it fluctuated. And
6 I -- without having who attended, I'd be
7 guessing in 2010 whether Jinping was
8 there, whether Nancy -- I don't know if
9 Nancy was working for me. I don't
10 have -- I don't have a vision of who was
11 actually at the meeting, other than the
12 reps. And I'm not even sure which reps
13 were working for me in 2010.

14 Q. Okay. So if you've turned
15 to the next page.

16 A. Yep.

17 Q. It says, "2009, a great
18 success story."

19 Do you see that?

20 A. I do.

21 Q. And did you create this
22 document, by the way?

23 A. Probably not.

24 Q. Who typically created these

1 documents for you?

2 A. Marketing does PowerPoints
3 for me.

4 Q. Marketing would have created
5 this document for you. And then would
6 you have been the one to present it?

7 A. I would.

8 Q. Who at marketing?

9 A. Jinping's group.

10 Q. And on the first -- on the
11 first page you're -- you're stating the
12 success story for 2009, correct?

13 A. Yes.

14 Q. And the first row of the
15 chart you have there is for generic
16 prescription products, correct?

17 A. Yes.

18 Q. And it's showing growth of
19 22 percent; is that right?

20 A. Growth of 22 percent, yes.

21 Q. And that's for all of your
22 generic prescription products, correct?

23 A. No. There's -- there's
24 products in the three buckets below too.

1 Q. Oh, is this -- so the
2 reference to Kadian is a Kadian generic
3 or is it --

4 A. Kadian generic.

5 Q. Okay. Why was Kadian
6 generic set out separately from other
7 generic prescription products, do you
8 know?

9 A. I don't know why.

10 Q. What does CR stand for, do
11 you know?

12 A. Where do you see that?

13 Q. Next page, first bullet.
14 I'm ahead of you.

15 A. Oh. CR is oxy -- oxy --
16 oxycodone controlled release.

17 Q. Okay. So it says launched
18 oxycodone IR?

19 A. Right.

20 Q. Which stands for?

21 A. Immediate release.

22 Q. And CR, controlled-release.
23 Is CR the same as extended-release?

24 A. Yes.

1 Q. Okay. Achieving annual
2 sales of \$93 million, correct?

3 A. Right.

4 Q. And then you have listed
5 below price increases resulted in
6 24 million. You have Acetasol resulted
7 20 million. And Diltiazem in 43 million.

8 So is it fair to say that
9 oxycodone IR and CR were your biggest
10 products for 2009 for \$93 million?

11 A. We probably have that listed
12 somewhere within this deck I would think.

13 Q. I think we'll get there.
14 But is that a fair statement?

15 A. I'd like to see how it --
16 how it compares, if it's in here.

17 Q. If you want to skip the
18 three pages --

19 A. Yeah.

20 Q. -- three pages later --

21 A. Yeah.

22 Q. -- we see that oxycodone ER
23 is ranked Number 1 in terms of net sales?

24 A. Yeah.

1 Q. At 49.9 million, correct?

2 A. I see that.

3 Q. Okay. And so oxycodone ER
4 for 2009 was your top product; is that
5 right?

6 A. Yes.

7 Q. And morphine sulfate ER,
8 which is generic Kadian, was your third
9 top product at \$30.4 million; is that
10 right?

11 A. That is.

12 Q. And oxycodone IR was your
13 sixth top product at 24.1 million in net
14 sales, correct?

15 A. Yes.

16 Q. And fentanyl was your
17 seventh top product at 21.8 million in
18 net sales, correct?

19 A. Yes.

20 Q. And this actually, at the
21 top states, top products for 2010, right?

22 A. That's right.

23 Q. But -- but it looks as if
24 this meeting was held in February of

1 2010. So would these have been your top
2 products for 2009?

3 A. I don't know. Let me --

4 Q. In any event, you identified
5 them for purposes of this presentation as
6 being --

7 A. Yeah, maybe in year.

8 Q. -- top products?

9 A. Might have been for '11.

10 Q. If you go back two pages to
11 where it says 2009 sales and marketing
12 success.

13 A. Mm-hmm.

14 Q. You see that you're calling
15 out the marketing success?

16 A. I think --

17 Q. In the heading on the third
18 page?

19 A. -- I think -- I think '11,
20 the number in -- oh wait. Maybe I'm
21 reading this wrong.

22 Q. I'm looking at the --

23 A. What are you --

24 Q. -- the third page of the

1 PowerPoint which is the fourth page of
2 the document.

3 Do you see that?

4 A. I'm looking at your screen.

5 Q. Perfect.

6 A. Okay.

7 Q. Do you see the heading says
8 "2009 sales and marketing success"?

9 A. Yep.

10 Q. So you are calling out your
11 team's marketing success for 2009; is
12 that right?

13 A. Yep.

14 Q. And do you see here that --
15 that you're stating that oxycodone IR and
16 CR had -- had the largest annual sales,
17 do you see that?

18 A. I'm saying that we achieved
19 \$93 million in sales.

20 Q. And that's the largest one
21 on this page, correct?

22 A. On this page, yes.

23 Q. And on the next page, you
24 have sales performance list -- listed, do

1 you see that?

2 A. Yes.

3 Q. And are these your sales
4 reps, Berryman, Cohen, Pehlke, Dorsey and
5 Thad Demos?

6 A. They are.

7 Q. Okay. And in the -- the
8 last column it says, "2H percent, target
9 achieved."

10 Do you see that, at the top
11 of the last column?

12 A. I do.

13 Q. And what does 2H percent
14 mean?

15 A. Second half of the year.

16 Q. Okay. And so this -- this
17 shows that all except for one exceeded
18 their sales target; is that right?
19 Because they're all over 100 percent?

20 A. That's what it shows.

21 Q. With the exception of Pehlke
22 who is at 80.7 percent, correct?

23 A. That's true.

24 Q. Okay. And --

1 A. For direct -- for the direct
2 side of the business.

3 Q. Okay. So that's for direct
4 sales. And then down below you have
5 again a list of your sales reps for
6 indirect sales, correct?

7 A. Right, but --

8 Q. And it looks like they are
9 the same but in a different order; is
10 that right?

11 A. Yes. Same -- same reps.

12 Q. So is it -- the same reps.
13 Was that the way it was structured, that
14 the same reps who marketed the -- who --
15 who sold the generic drugs to the direct
16 customers were the ones who sold generic
17 drugs to indirect customers?

18 A. I just want to clarify for
19 you, indirect customers to these people
20 would be major warehouse people that
21 don't -- major accounts that don't have a
22 warehouse. Not -- not independent
23 pharmacies.

24 So -- I'm trying to give you

1 an example. SuperValu, I think, would be
2 one example, or -- or maybe like Giant
3 Foods didn't have a warehouse. So
4 they -- or -- or Safeway out by you,
5 wouldn't have a warehouse. So these
6 indirect accounts are not independent --
7 in -- what you're thinking of
8 independent -- my reps did not call on
9 independent pharmacies on the corner of
10 the street in New York City or something.

11 These are large, very large
12 accounts that bought through wholesalers,
13 that we could do contracting with. Does
14 that make sense?

15 Q. Yes. But my question was,
16 is it the same reps who were marketing
17 generic drugs to your direct customers as
18 it was who marketed generic drugs to your
19 indirect customers?

20 A. The same reps sold product
21 to direct customers as well as sold
22 product to indirect customers.

23 Q. And these are -- what was
24 the difference in terms of how they sold

1 the product to direct customers and
2 indirect customers?

3 A. It's -- it's the price,
4 product supply, quality of the product,
5 consistent supply.

6 Q. What do you mean by quality
7 of the product, aren't they selling the
8 same product?

9 A. They are, but some -- some
10 people had a lot of recalls, some
11 competitors.

12 So that the quality of the
13 product, meaning that -- they are all the
14 same product, but if you don't have
15 consistent supply and you are having a
16 lot of recalls -- when I think of
17 quality, I think of recalls. That would
18 hurt your sales.

19 Q. But they are selling the
20 same product to their direct customers as
21 they are selling to their indirect
22 customers, right?

23 A. Right, but you --

24 Q. I'm trying to get at what

1 the difference is between how they market
2 or sell their product to direct customers
3 and how they do it to indirect customers.

4 A. They -- they sell -- that's
5 what I'm getting at. They sell the same
6 way.

7 Q. Okay. So there's no real
8 difference?

9 A. They sell the same way.

10 Q. And on the next page it
11 looks like Mr. Thad, a/k/a Tad was the
12 highest regarded salesperson for --

13 A. Yeah.

14 Q. -- for 2009; is that right?

15 A. Yes.

16 Q. And did he get some sort of
17 recognition for being the -- the top
18 seller?

19 A. I don't think it was
20 substantial.

21 Q. You don't think what?

22 A. I don't think it was
23 substantial.

24 Q. No substantial recognition

1 for being the top seller?

2 A. If I recall, this was kind
3 of like a candy bar and a \$100, if I
4 recall. Some -- it was kind of a -- a
5 little bit of a joke with it. I mean,
6 when you only have four reps or five reps
7 so...

8 Q. But he would have most
9 likely received his bonus, correct?

10 A. He received his bonus if
11 he -- well, Thad was a consultant so I'm
12 just trying to think whether he was on
13 our -- I don't -- I'd have to look at --
14 at the document.

15 He was a consultant, sales
16 consultant. I believe he was on the same
17 program. But -- but he would have
18 made -- he would have gotten his bonus
19 payout if -- his maximum bonus payout if
20 he met the three criteria -- there -- it
21 was broken down into three criterias, the
22 program.

23 Q. Meaning your sales targets
24 and what else?

1 A. We had a team bucket, so
2 they had to -- we had to meet our total
3 number as a team in order to get
4 100 percent payout.

5 Their specific, what I would
6 call their specific targets, and then I
7 had what I call a soft bucket based on
8 their performance and management of -- of
9 their territory. It fluctuated over the
10 years -- treatment, their professionalism
11 in the field, just what I call a soft
12 budget.

13 Q. And if you turn to the next
14 page. Do you see the page that starts,
15 "Top ten accounts"?

16 A. Yeah.

17 Q. And were those your biggest
18 customers listed there, Cardinal Health,
19 McKesson Drug, AmerisourceBergen?

20 A. Yes.

21 Q. VA, what's VA?

22 A. Veterans -- Veterans
23 Administration, association -- whatever
24 the vet -- whatever we call our vet

1 hospitals.

2 Q. Yeah.

3 A. Yeah. They had a big mail
4 order company.

5 Q. Okay. Walgreens is your
6 fifth largest company, correct?

7 A. In --

8 Q. In generic?

9 A. In this -- whatever this
10 year is. I think this is '9.

11 Q. 2009?

12 A. Because this is -- I don't
13 know if I made a mistake. But I think
14 this is the calendar year '9. It doesn't
15 say the year.

16 Q. Okay. On the next page, you
17 have, "Path for sales success"?

18 A. Yes.

19 Q. It begins with, "Focus on
20 key profitable products and key
21 customers," correct?

22 A. Yes.

23 Q. And the key profitable
24 products that we just saw or the most

1 profitable product at that point was
2 oxycodone ER, correct?

3 A. Right.

4 Q. And the key customers are
5 identified on the prior page, correct?

6 A. Yes.

7 Q. "Sell on Actavis growth
8 story." What was Actavis' growth story
9 that you were using to market the drugs?

10 A. The company was -- had a lot
11 of acquisitions globally.

12 Q. And how did you use that to
13 sell the drugs?

14 A. It showed that we had growth
15 by acquisition, and that you wanted --
16 the customer -- you told the customers
17 they wanted to partner with a company
18 that is buying other companies.

19 Q. And the next one, it says,
20 "Sell on Actavis global position." What
21 would -- what did that mean?

22 A. It means that we had a
23 global footprint, so we could compete
24 with -- with other major players because

1 we had plants throughout the world with
2 low costs and with the ability to -- to
3 make unique products.

4 Q. And that was something that
5 you used to market your products to the
6 distributors or to your -- to your
7 customers?

8 A. It was part -- one of the
9 selling story lines for the reps.

10 Q. And what was, "Keep the
11 snowball rolling to make it bigger"?
12 What does that refer to?

13 A. That's just a little slang
14 that if you start business with a
15 customer, and you get an item, you can
16 build upon it, just a building block,
17 just another way of saying building
18 block.

19 Q. Okay. And the last -- and
20 the last slide sets forth the sales
21 target for the sales and marketing teams;
22 is that right?

23 A. Yes.

24 Q. And it was set at

1 \$477.5 million.

2 Do you see that?

3 A. I do.

4 Q. And --

5 (Document marked for
6 identification as Exhibit
7 Allergan-Perfetto-19.)

8 BY MS. BAIG:

9 Q. I'll have this marked as
10 Exhibit 19.

11 When somebody says, "I may
12 cut orders," what does that mean? Does
13 that mean reduce orders?

14 A. No. That means -- that
15 means they are going to --

16 Q. Place orders?

17 A. -- physically place orders.

18 Q. Okay. So you see at the
19 bottom of this e-mail chain there's --
20 this document is Bates-stamped
21 ACQUIRED_ACTAVIS_01169947, and the bottom
22 begins as an e-mail from Joe Lefebvre,
23 who is from AmerisourceBergen, correct?

24 A. Yes.

1 Q. To you, on April 8, 2009,
2 and he's basically stating to you that he
3 may place oxy orders next week; is that
4 right?

5 A. That's what he wrote.

6 Q. And you forward that on to
7 Doug Boothe --

8 A. I did.

9 Q. -- who you're reporting to,
10 correct?

11 A. Yes.

12 Q. As good news, correct?

13 A. Yes.

14 Q. And he responds that it's
15 positive. And then you respond back
16 that, "All focused on driving sales on
17 oxy."

18 Do you see that?

19 A. I do.

20 Q. How did you -- how did you
21 focus on driving sales of oxy?

22 A. This is, I believe, the
23 relaunch after we were off the market for
24 a year, just going off of the fact that

1 we had short dated product. So I
2 would -- I would sell oxy by explaining
3 to people that we were back in the
4 market. We were making it. I believe we
5 moved it to our Elizabeth site. So it
6 was a better -- it was a higher quality
7 site. It was no longer being made at
8 Amide.

9 And -- and I would tell them
10 that we had product to sell and
11 inventory.

12 Q. Do you know what ADM stands
13 for?

14 A. I do not.

15 Q. If you wrote to -- from you
16 to Doug Boothe and you signed it, "Your
17 ADM," do you know what that means?

18 A. Is it on here?

19 Q. No, it's on a different
20 document which I might not need. But I
21 was just wondering if you knew --

22 A. ADM? ADM. I do not. If I
23 saw the whole e-mail I might be able to
24 figure it out.

1 (Document marked for
2 identification as Exhibit
3 Allergan- Perfetto-20.)

4 BY MS. BAIG:

5 Q. Let's have this document
6 marked as Exhibit 20.

7 MR. LUXTON: After you're
8 done with this one, can we take a
9 quick break?

10 MS. BAIG: Sure.

11 MR. LUXTON: Thanks.

12 BY MS. BAIG:

13 Q. This is a document
14 Bates-stamped ACQUIRED_ACTAVIS_00002258
15 to 2259. It starts as an e-mail from you
16 to Doug Boothe on February 20th, 2008.
17 And the subject is "Programs." And the
18 attachment is "Strategic Program Tracking
19 Sheet."

20 A. Mm-hmm.

21 Q. And you write to him, "Let
22 me know if I missed anything, your ADM."

23 Do you see that?

24 A. I think I meant admin.

1 Q. Your admin?

2 A. Because I had -- because of
3 what I put together, your admin.

4 Q. Okay. And then you've got
5 on the next page, "Strategic program
6 tracking sheet," right?

7 A. Yes.

8 Q. And what -- so for
9 example -- well, what is this document?

10 A. It docs -- what we were
11 potentially trying to do with each of the
12 major customers, and where we were with
13 the strategic program with them.

14 Q. And are these marketing
15 programs?

16 A. No. They are more
17 contract -- contract negotiation
18 programs, I would call them. They are
19 usually financially driven.

20 Q. And who creates the
21 contracts? Who drafts the contracts?
22 The contracts department?

23 A. They do, yes.

24 Q. And that was Ara

1 Aprahamian's unit?

2 A. He would draft the formal
3 contract. The negotiation would be,
4 depending on the size of the account,
5 with the rep, myself, maybe Ara. Again,
6 a cross-functional team. Maybe Doug.
7 Depending on the size of the team.

8 Q. Was Jinping involved in that
9 as well?

10 A. Occasionally. Not as much.

11 Q. So if you look a little more
12 than halfway down --

13 A. Yep.

14 Q. -- ANDA is listed. And in
15 the program type, it says, "Expand
16 existing strategic program (fentanyl)" --

17 A. Yep.

18 Q. -- and another drug?

19 A. Nifedipine.

20 Q. -- "to include new 2008
21 approvals. Propose Actavis strategic
22 points program for targeted accounts."

23 What was the strategic point
24 program?

1 A. That was a program. I
2 couldn't give you the details to save my
3 life right now. But it was a program
4 developed by -- actually I misspoke. I
5 didn't look at the date here. Ara
6 Aprahamian was not with the company in
7 2008. Sorry.

8 Q. Okay.

9 A. I just want to qualify. You
10 asked if he -- I didn't realize this was
11 this old of a --

12 Q. Okay.

13 A. So it was a program that was
14 not around a long time. But it was a
15 program that Terry Fullem and Joe
16 Corsetti established.

17 Q. What division were they in?

18 A. They worked for Doug
19 directly. It was before I had -- I had
20 contracts in pricing. They worked for
21 Doug directly. This is going back 2008.

22 Q. And they were in what
23 division?

24 A. They were in the generics.

1 Q. Generics?

2 A. Yeah.

3 Q. They were not in a
4 subdivision of generics at all?

5 A. No.

6 Q. And do you recall what the
7 strategic points program was?

8 A. I recall that it was a very
9 convoluted, confusing program.

10 Q. But you don't recall what
11 the existing program was or how it was
12 being changed for fentanyl?

13 A. No, I do not.

14 Q. Or how it was being expanded
15 for fentanyl?

16 A. I do not.

17 Q. And do you see in the next
18 square right next to that it says,

19 "Compliance programs underway to drive
20 additional fentanyl and Nifedipine" --

21 A. Nifedipine ER.

22 Q. "Nifedipine ER conversion"?

23 A. Yep.

24 Q. What does that mean?

1 What compliance programs
2 were underway to drive fentanyl?

3 A. Fentanyl had a very poor
4 substitution rate for generic so these
5 were programs to try to see if customers
6 could -- could utilize the generic more
7 than the brand.

8 MR. LUXTON: Are you going
9 to the next document?

10 MS. BAIG: Mm-hmm.

11 MR. LUXTON: Do you want to
12 take a quick break?

13 MS. BAIG: Mm-hmm.

14 MR. LUXTON: Thanks.

15 THE VIDEOGRAPHER: Please
16 remove your microphones. The time
17 is 4:43 p.m. We are off the
18 record.

19 (Short break.)

20 THE VIDEOGRAPHER: We are
21 back on the record. The time is
22 4:57 p.m.

23 (Document marked for
24 identification as Exhibit

1 Allergan-Perfetto-21.)

2 BY MS. BAIG:

3 Q. I'll have this document
4 marked as Exhibit 21.

5 This document begins as an
6 e-mail from you to Doug Boothe, cc'g
7 Jinping McCormick. Bates-stamped
8 ALLERGAN_MDL_ 0121248 through 21261.

9 And it appears to be a
10 presentation that you were sending to
11 Doug Boothe, a -- just a presentation.

12 Do you see that?

13 A. I do, yes.

14 Q. And this was prepared for
15 the Actavis sales meeting on February 15,
16 2012?

17 A. Yes.

18 Q. And was this a presentation
19 created by you?

20 A. It would be created by
21 Jinping's group.

22 Q. Jinping group was a
23 marketing group, right?

24 A. Yes.

1 Q. Okay. And was it created to
2 motivate your generic sales team to drive
3 sales of their -- of their generic
4 products?

5 A. It was a sales meeting
6 presentation.

7 Q. And the title is "Bring your
8 a Game."

9 A. The theme of the meeting.

10 Q. Was to bring your a game?
11 To motivate your sales guys, right?

12 A. Yeah. That's what you have
13 a sales team for.

14 Q. Okay. And was this a
15 similar type of meeting as the one that
16 we just went through with the other
17 PowerPoint presentation?

18 A. Similar, yeah.

19 Q. And do you recall who was
20 there?

21 A. Just based on the agenda,
22 Jinping was there. Ara was there. It
23 looks like -- this meeting, I think, was
24 held in Morristown. So I see Michael

1 Clarke did give a 30-minute presentation.
2 OTC team gave a presentation. So if --
3 if it was held in Morristown, these
4 people would be just brought in to update
5 the sales team.

6 Q. Okay. And here, you're
7 touting, "Another great success story for
8 2011, three years in a row," right, on
9 the next page?

10 A. I am, yes.

11 Q. And is the purpose of this
12 to show the reps how they compare to each
13 other in terms of their sales targets?

14 A. Just to show them results
15 for the year.

16 Q. And it appears from the last
17 column that each of them met their sales
18 targets with the exception of Berryman,
19 who was at 98.99 percent; is that right?

20 A. That's true.

21 Q. So they all either met or
22 exceeded their sales targets; is that
23 right?

24 A. They did that year.

1 Q. And Ms. Lisa Pehlke was
2 called out for being an outstanding sales
3 rep; is that right?

4 A. It appears that way in the
5 letter.

6 Q. And on the next page, it
7 shows top accounts for growth in fiscal
8 year 2011.

9 Do you see that?

10 A. I do.

11 Q. And again it calls out
12 McKesson and Walgreens and Opti-Source,
13 Medco and Kaiser as being your top
14 customers; is that right?

15 A. It's top accounts for
16 growth. I'm not sure if it's top
17 accounts to our top customers.

18 Q. Okay. So these customers
19 grew the most?

20 A. Yes. That's the way I read
21 it.

22 Q. For generic products, right?

23 A. Yes.

24 Q. And it says down here,

1 "Combined sales greater than 10 million
2 in 2011."

3 Do you see that?

4 A. Mm-hmm.

5 Q. That was just for these
6 customers?

7 A. To make this list you had to
8 have combined sales, so I could have
9 had -- the reason that's in there is, you
10 could have a very small account that had
11 200 percent growth but it's a very small
12 account, so it's not relevant.

13 Q. I see. So each of these
14 customers had no -- it's not that each of
15 these customers had sales greater than 10
16 million, is it? Or is it?

17 A. Yes, yes, yes.

18 Q. Okay. So each of these
19 customers had more than \$10 million in
20 sales?

21 A. To make this slide.

22 Q. Yes.

23 A. To be a posted -- to be
24 written on this slide.

1 Q. And each of them had a
2 growth rate greater than 20 percent in
3 2010, correct?

4 A. Yes.

5 Q. Okay. Actually in 2011,
6 correct?

7 A. '11, yes.

8 Q. Okay. Excluding Kadian.
9 Why is Kadian carved out here? This is
10 the brand name Kadian being carved out?

11 A. No. We never sold the
12 brand. We sold the authorized generic of
13 Kadian. My team -- excuse me, my team
14 never sold Kadian brand.

15 I'm not sure why. I
16 don't -- at this day, I don't know why
17 that was excluded. But there had to be a
18 reason. I don't know why the reason is.

19 Q. Was it -- was it -- could it
20 have been because the company was also
21 selling branded Kadian, and so the
22 generics division was not pushing generic
23 Kadian?

24 A. No.

1 Q. On the next page, you see
2 the top ten products for 2011?

3 A. I do.

4 Q. And you see that the
5 fentanyl patch has actually moved up from
6 the place it was in on the last
7 PowerPoint to Slot Number 2 here.

8 Do you see that?

9 A. I do.

10 Q. And oxycodone remains at the
11 highest selling product, correct?

12 A. I do.

13 Q. And it shows here the
14 generic revenue target as being
15 \$610 million.

16 Do you see that on the next
17 page?

18 A. It is.

19 Q. And that's an increase from
20 the last year's -- or from the last
21 generic revenue target that we saw from
22 the last PowerPoint presentation,
23 correct?

24 A. From the 2011?

1 Q. From the PowerPoint
2 presentation that was dated February of
3 2010.

4 A. I believe so.

5 Q. That had a sales target of
6 \$477.5 million, correct?

7 A. Yes.

8 Q. So it's grown, over -- over
9 the course of those years, correct?

10 MR. ROTH: Object to form.

11 THE WITNESS: Yes.

12 BY MS. BAIG:

13 Q. On the next page, do you see
14 it says, "AG opportunities and review of
15 competitors' product lines for additional
16 revenues"?

17 A. Mm-hmm.

18 Q. What's AG?

19 A. Authorized generic.

20 Q. On the next page, do you see
21 it says, "Key products needle movers with
22 key customers follow the POA"?

23 A. Yes.

24 Q. What is POA?

1 A. Plan of action.

2 Q. What is the 80/20 rule?

3 A. It's Italian philosopher's
4 rule that -- I'm trying to think of the
5 actual philosopher. Does anybody...

6 It -- it means that in life,
7 80 percent -- in sales, let's use sales
8 because we are talking sales here, but in
9 life it works too. 80 percent of your
10 business comes from 20 percent of your
11 customers.

12 Q. And on the next page you
13 have sales improvement areas. Do you see
14 that?

15 A. Yes.

16 Q. The first one being
17 accountability. What did you mean by
18 that?

19 A. It means that the sales reps
20 need to take accountability for their
21 actions and their -- and their accounts,
22 and what their responsibility is as a
23 sales rep. Calling on the accounts.
24 Being professional. Following up with

1 internal people. That's accountability.

2 Q. And do you see the second
3 bullet says, "Less e-mails, more phone
4 calls or meetings"?

5 A. Yes.

6 Q. And why were you suggesting
7 that the sales reps use less e-mails?

8 A. Because I find that
9 people -- I -- I have a -- that's a pet
10 peeve -- personal pet peeve of mine.
11 People say I sent you an e-mail, and
12 there's -- they -- especially reps who
13 are in the field -- and then they wipe
14 their hands that they are done with this.
15 That's where accountability falls in.

16 Call people up on the phone,
17 set up a meeting, just don't say in an
18 e-mail.

19 Q. And the next bullet says,
20 "Don't ask, don't get field information"?

21 A. That's right.

22 Q. Why were you suggesting that
23 the sales reps should not be asking about
24 or getting field information?

1 A. No, I'm telling them, that
2 means don't ask, don't get, meaning you
3 have to ask in order to get. We -- we
4 needed the -- part of their -- their
5 compensation was -- was getting -- we --
6 we can't manage the business from
7 corporate without having an understanding
8 of the market dynamics. So if you don't
9 ask for field information, you don't get
10 it.

11 Q. And the next bullet says,
12 "How can you be better than Watson, if
13 you expect the same outcome with the same
14 input?"

15 What did you mean by that?

16 A. This was a time that Watson
17 was -- when was this meeting? So
18 Watson -- this -- the -- again, the
19 Watson was buying Actavis. So I was
20 trying to prepare the reps that there
21 would be a selection process. That they
22 needed to do -- they needed to be -- they
23 really needed to focus and -- and do
24 their best this calendar year '12,

1 because it would be the last year.

2 And -- and Watson would be picking the
3 best team to go forward with. So that's
4 what that -- I meant by that.

5 Q. And the next one says, "Take
6 more risk." What type of risk were you
7 suggesting the sales reps take?

8 A. I don't -- I don't know.
9 Just -- just in general push the
10 envelope. I really don't know.

11 Q. Then the next page has the
12 2012 direct and indirect targets. Do you
13 see that?

14 A. I do.

15 Q. Why are the second half of
16 the year targets lower than the first
17 half of the year?

18 A. Probably expected
19 competition on products.

20 Q. On the next page it states,
21 "Focus on the needle mover products."

22 Do you see that?

23 A. Yeah.

24 Q. And for fentanyl patch it's

1 showing the estimated December 2011 share
2 as 10 percent and the target additional
3 share is 3 percent.

4 A. That --

5 Q. Do you see that?

6 A. That's right.

7 Q. What does that mean?

8 A. It means that we have
9 10 percent of the generic fentanyl patch
10 business. And I want three additional
11 points.

12 Q. Okay. And why does
13 oxymorphone ER have an N/A?

14 A. Let's see. Maybe I can
15 figure it out.

16 Q. If you look in the comments
17 box?

18 A. This -- this product is very
19 unique in that when we launched, the
20 brand discontinued the strengths. So we
21 had no reference drug.

22 Q. I see. So you had no -- so
23 you couldn't figure out the share for
24 that, is that what you're saying?

1 A. No. It's a very unique
2 product in that we were -- we -- we
3 launched with the certain milligram and
4 the brand had -- before we launched, the
5 brand had discontinued the product.
6 So -- so that the -- their scripts were
7 going down. So I don't think we could
8 get an accurate analysis of the share.

9 Q. So on the last page, you
10 have -- you are setting a target for your
11 sales and marketing team of \$610 million,
12 correct?

13 A. Yes, ma'am.

14 Q. And that's an increase from
15 the last one; is that right?

16 A. Yes.

17 (Document marked for
18 identification as Exhibit
19 Allergan-Perfetto-22.)

20 BY MS. BAIG:

21 Q. I'll have this document
22 marked as Exhibit 22. Who is Joseph
23 Corsetti?

24 A. He was contracts and pricing

1 at Alpharma, probably the time period of
2 2008.

3 Q. And this, you'll see, is an
4 e-mail from you to Joseph Corsetti and
5 others on -- in March 11, 2008. Subject
6 line is Kroger Choice program offer --
7 well, Kroger Choice menu, and Kroger
8 Choice program offer. And it's
9 Bates-stamped Acquired_Actavis_00452409
10 through 52411.

11 Do you see that?

12 A. Yeah.

13 Q. Okay. And the second page
14 is a chart that lists a number of your
15 products, the form, the strength, the
16 size, the brand, the status and the
17 points. Do you know what this chart
18 reflects?

19 A. This is the Choice program
20 that you asked me about that I told you
21 was a convoluted -- convoluted --
22 convoluted program. Very confusing
23 program, let's put it that way.

24 Q. Okay. And what are the

1 points in the last column?

2 A. You -- you got points,
3 just -- just a number, if you selected
4 certain products.

5 Q. You being the customer?

6 A. Yeah. Like a -- it's almost
7 like a -- I don't know. I really -- I
8 didn't develop this program. And I -- I
9 don't think we -- we were able -- to the
10 best of my knowledge, we weren't able to
11 execute on this program.

12 Q. Who developed the program?

13 A. Joe Corsetti and Terry
14 Fullem.

15 Q. And under the program, your
16 customers were offered certain points if
17 they placed for example, oxycodone
18 15 milligrams and 30 milligrams onto --
19 onto their contract; is that right?

20 A. Onto their formulary.

21 Q. Onto their formulary.

22 A. Yeah. Their -- their retail
23 or mail order formulary.

24 Q. And so, looking at this

1 chart, if they placed oxycodone
2 15 milligrams or 30-milligram tablets
3 onto their formulary, they would receive
4 2.2 points, right?

5 A. Yeah.

6 Q. And what would they use the
7 2.2 points for?

8 A. I -- I think you've had the
9 more products -- well, it should be
10 described on the next slide.

11 Q. Let's take --

12 A. I don't remember this
13 program, it's 2008, without referencing
14 the slide.

15 Q. Sure. Let's take a look at
16 it.

17 A. I didn't really --

18 Q. It appears from the next
19 page that there was a 25-point program
20 and a 50-point program. Do you see that?

21 A. Right. Right. I do.

22 Q. And -- and it -- and under
23 the 25-point program, if Kroger selected
24 certain products totaling 25 points in

1 value, then they would receive an upfront
2 incentive payment from Actavis, correct?

3 A. Yep.

4 Q. And they would additionally
5 receive a 15 percent rebate for all new
6 products -- products added under the
7 program for the length of the agreement;
8 is that right?

9 A. That's right.

10 Q. Okay. And then the 50 --
11 50-point program has slightly different
12 terms, but it's -- it's similar in
13 concept, correct?

14 A. And this is a proposal.

15 Q. Okay. So do you know
16 whether this program was ever
17 implemented?

18 A. With Kroger?

19 Q. With anyone.

20 A. I don't -- I -- sitting here
21 now, in 2008 -- is it 2008? I -- I don't
22 know if it was implemented with anybody.

23 Q. And what was finasteride?
24 Do you know what kind of drug that is?

1 A. Yeah, I do. It's a BPH
2 drug.

3 Q. What's BPH?

4 A. It's for men with prostate
5 problems, non -- non-cancerous prostate
6 problems. It's a female hormone.

7 Q. Okay. So the drug with --
8 with the first amount of points was
9 finasteride, correct, on the preceding
10 page?

11 A. Yeah. Yes.

12 Q. And the drug with the second
13 amount of points was oxy and ibuprofen;
14 is that right?

15 A. I think this is just an
16 example that they developed.

17 Q. So you don't know whether
18 this was ever offered to Kroger?

19 A. I wanted to see if they
20 e-mailed it to Kroger. I don't recall.
21 And I don't know whether -- it could have
22 been offered to Kroger, but I don't
23 believe it was executed upon with Kroger.

24 Q. Why -- why do you think it

1 wasn't?

2 A. I don't -- I think it's too
3 complicated. It's very complicated in
4 what is -- it's very confusing. It was
5 always very confusing to me, this
6 program. So it's hard to sell it.

7 Q. So you're not aware one way
8 or the other whether the Marketing Choice
9 Point program was ever implemented with
10 any customer; is that right?

11 A. I would think you could --
12 if it was, it would be in our contract
13 system.

14 Q. Okay.

15 A. Maybe there's one or two or
16 three accounts. I'm not going to say --
17 I cannot sit here in 2018, 10 years ago,
18 and say ABC agreed to this. I have no
19 idea.

20 Q. And do you recall
21 offering -- apart from the Marketing
22 Choice Point program, do you recall
23 offering rebates to certain of your
24 clients?

1 A. Yes.

2 Q. And how did the rebate
3 program work?

4 A. It depended on the customer.

5 Q. Generally speaking, though,
6 how did the rebate program work? Was it
7 that if they placed drugs on formulary
8 they would get a rebate or was it if they
9 purchased a certain amount of quantity
10 they would get a rebate?

11 A. It really, really is
12 specific. Every contract negotiation is
13 specific to the customer and trying to do
14 better than the other generic
15 manufacturers, with also keeping the
16 company profitable at the same time.

17 Q. And do you know what the
18 range of rebates offered was?

19 A. No, I do not.

20 Q. Do you know -- do you know
21 whether there were in fact rebates
22 offered that were basically volume
23 incentive?

24 A. We had volume incentive

1 rebates, again, with specific customers.

2 Q. Okay. What other types of
3 rebates did you have?

4 A. I mean, product-specific
5 rebates. Rebate -- it's hard for me to
6 think of what other rebates we had at
7 this point.

8 Q. Did you have any other
9 volume incentive programs?

10 A. Clarify that.

11 Q. Did you have any other
12 volume incentive programs that you used
13 with your customers to incentivize them
14 to purchase more of a drug in exchange
15 for something?

16 A. Typically you have a volume
17 incentive rebate that's based on annual
18 purchases for the product line.

19 Q. Any other types of volume
20 incentive programs that you can recall?

21 A. I can't recall any.

22 Q. Did Actavis attend trade
23 shows?

24 A. Yes.

1 Q. And how often did they
2 attend trade shows?

3 A. How often -- we probably
4 attended, you know, once a month, we were
5 at a different type of trade show.

6 Q. Your division was?

7 A. Yeah. I'm estimating here.

8 Q. Sure.

9 A. We attended trade shows.
10 They attended a lot of trade shows.

11 Q. Okay. And what types of
12 trade shows did they attend?

13 A. The wholesalers had trade
14 shows. The chains had trade shows. The
15 distributors had trade shows or meetings.
16 You know, when I think of trade shows,
17 meetings, that type of thing.

18 Q. And what was the purpose of
19 attending the trade shows?

20 A. Depends on the trade show.
21 If it was a -- if it was a national chain
22 association, it would be mostly chains
23 and wholesalers there. So you would meet
24 with your customers.

1 Q. And who would attend this --
2 the trade shows? Would it be the
3 marketing team or the sales team or both?

4 A. Again, it depends on, you
5 know, there's some key trade shows.
6 There's some smaller trade shows that
7 we'd be sending just the rep. On a key
8 trade shows, like an NACDS, national
9 chain drug, we would bring most of the
10 team, the sales team.

11 Q. And how about the marketing
12 team?

13 A. We may, depending on -- I
14 mean, I know Jinping attended a lot of
15 trade shows, and maybe one of her product
16 managers.

17 We brought different --
18 different people to expose them to
19 customers. And sometimes as an award for
20 doing a good job in the year we would
21 take them to a trade show.

22 Q. To a trade show that was in
23 a nice location? Is that why it's an
24 award?

1 A. No. I mean, they're in
2 Boston or --

3 Q. But they liked going? Is
4 that what you're saying.

5 A. Huh?

6 Q. They liked going? Is that
7 what you're saying?

8 A. Well, it just showed that
9 they were part of the team and they got
10 exposure to customers.

11 Q. Okay. And when you went to
12 trade shows, would you set up booths?

13 A. Most of the time, yes.

14 Q. And would you have brochures
15 that you passed out?

16 MR. ROTH: Object to form.

17 THE WITNESS: What I would
18 call ad slicks.

19 BY MS. BAIG:

20 Q. Ad slicks?

21 A. One-page ad slicks.

22 Q. How are you spelling that?
23 Ad and then slicks?

24 A. A-D, slicks, S-L-I-C-K-S.

1 Q. Okay. And what did the ad
2 slicks look like?

3 A. One page showing either a
4 product we just launched -- and again,
5 getting -- showing people that we have
6 launched a new generic.

7 Q. Any other types of materials
8 that you would pass out at trade shows?

9 A. Pens, pads, sticky notes.

10 Q. Anything else with your --
11 information about the drugs that you were
12 marketing?

13 MR. LUXTON: Objection to
14 form.

15 THE WITNESS: At this point
16 I don't -- I don't recall anything
17 but primarily ad slicks and what I
18 call trinkets, like pens or
19 trinkets.

20 BY MS. BAIG:

21 Q. Okay. Do you recall sending
22 out mailers to customers about certain of
23 your drugs?

24 A. Depending on the product,

1 yes.

2 Q. And did you do that on a
3 pretty regular basis?

4 MR. LUXTON: Objection to
5 form.

6 THE WITNESS: Excuse me?

7 BY MS. BAIG:

8 Q. Did you do that on a pretty
9 regular basis?

10 A. I think it was not regular.
11 I would think it's more of a relatively
12 unique for us thing to do mailers.

13 Q. Do you recall -- do you
14 recall any mailers being used for
15 oxycodone?

16 A. I do not.

17 Q. How about Kadian?

18 A. I do not.

19 Q. Oxymorphone?

20 A. I believe so.

21 Q. What do you recall about
22 that mailer?

23 A. The fact that, again, as I
24 stated earlier, I believe that drug

1 was -- the brand discontinued the
2 strengths that we launched. So we needed
3 to inform people that an alternative
4 generic was available in the market.

5 Q. And did you send out mailers
6 with respect to fentanyl?

7 A. I don't believe so.

8 Q. How about oxy ibuprofen?

9 A. I don't believe so.

10 Q. Did you -- did you pay any
11 of your customers to market your products
12 for you?

13 A. Did I pay any of my
14 customers to market my product for me?

15 MR. LUXTON: Objection to
16 form.

17 THE WITNESS: I mean, as I
18 said, we don't market our product.
19 To sell -- I would say sell our
20 products.

21 BY MS. BAIG:

22 Q. We don't want to spend time
23 going around on this. Obviously my
24 definition of market is broader than

1 yours, since your definitions purely
2 going into doctors' offices.

3 But my question to you is
4 whether you had any marketing agreements
5 with your customers such that they would
6 market or sell your products to their
7 downstream customers for you, and you
8 compensated them to do that?

9 MR. LUXTON: Objection to
10 form.

11 THE WITNESS: I can't think
12 of one that I can, like, bring up
13 right now and identify it.

14 BY MS. BAIG:

15 Q. Do you recall generally that
16 that was a -- was something that was
17 done?

18 MR. LUXTON: Objection to
19 form.

20 THE WITNESS: I can't speak
21 generally, because I can't --
22 without seeing a document, I
23 wouldn't be able to pull program
24 and give you an example here.

1 BY MS. BAIG:

2 Q. Do you recall using any
3 outside agencies to market any of the
4 generic products?

5 MR. LUXTON: Objection to
6 form.

7 THE WITNESS: Outside
8 agencies to sell our product?
9 Define "agencies."

10 BY MS. BAIG:

11 Q. Organizations, any third
12 party. Was there anybody other than your
13 division selling your generic products?

14 A. We sell to our distributors
15 and our wholesalers, and then they sell.

16 Q. Yes. But did Actavis hire
17 anybody to help sell their products,
18 their generic products?

19 A. To -- to other --

20 MR. ROTH: Objection to
21 form.

22 MR. LUXTON: To your
23 knowledge.

24 THE WITNESS: No, I don't

1 believe so.

2 BY MS. BAIG:

3 Q. Okay. Are you -- are you
4 familiar with a company named inVentiv?

5 A. I think the branded company
6 used them.

7 Q. Okay. Did you ever have any
8 dealings with inVentiv?

9 A. I don't believe so.

10 Q. Okay. Did your division
11 ever have any dealings with inVentiv to
12 your knowledge?

13 A. I don't recall having --
14 meeting with anybody at this point in
15 time from inVentiv and working with
16 anybody from inVentiv.

17 Q. Do you recall ever hearing
18 from anybody in your division was working
19 with inVentiv?

20 A. In what regard? I'm -- I'm
21 trying to understand it.

22 Q. To sell generic products.

23 A. If you show me something, I
24 might be able to -- to discuss it. But

1 I -- as we sit here today, I can't think
2 of them selling -- and when you're saying
3 selling, selling to our distributors, our
4 chains, people like that.

5 Q. Selling to anyone. I would
6 presume they are your distributors of
7 chains. But are you aware of inVentiv
8 selling any products for Actavis or were
9 you ever aware of that?

10 MR. LUXTON: Objection to
11 form. Asked and answered.

12 THE WITNESS: I -- I don't
13 recall as of today them doing
14 that.

15 BY MS. BAIG:

16 Q. To the extent that -- that
17 there were agreements with your customers
18 by which you would pay them to market
19 your products, would those be reflected
20 in the contracts with those customers?

21 MR. ROTH: Objection to
22 form.

23 THE WITNESS: Any --
24 anything -- any contract -- any

1 rebate or allowance that we
2 provided to the customer would be
3 in a contract and would be in our
4 contract system.

5 BY MS. BAIG:

6 Q. And would marketing
7 allowances be in the same contract or
8 would there -- there be a separate
9 contract for that?

10 MR. ROTH: Objection to
11 form.

12 THE WITNESS: They could be
13 in the same contract. They could
14 be a standalone contract. But
15 they would be in our contract
16 database.

17 BY MS. BAIG:

18 Q. And the person to ask about
19 the separate marketing allowance
20 contracts, if there are any, would be?

21 A. Ara.

22 Q. Ara.

23 A. In -- from when he started.

24 He started in I think '10, maybe. I'm

1 trying to think -- yeah, around '10.

2 Q. 2010?

3 A. Yes.

4 Q. Do you recall ever tracking
5 how your customers marketed your product,
6 if at all?

7 MR. LUXTON: Objection to
8 form.

9 THE WITNESS: Can you repeat
10 the question?

11 BY MS. BAIG:

12 Q. Do you recall ever tracking
13 how your customers marketed your product?

14 MR. ROTH: Objection to
15 form.

16 THE WITNESS: I mean we
17 track sales of our customer. So
18 we knew what McKesson was selling
19 of our customer work. So in that
20 respect, yes, we tracked the
21 customers, what they are selling.

22 BY MS. BAIG:

23 Q. Okay. But if McKesson was
24 handing out brochures about product that

1 you sold to McKesson, would you have seen
2 those brochures or were you not tracking
3 them?

4 A. I -- I probably would not
5 see them.

6 Q. Okay. Did you have
7 negotiations with your customers about
8 formulary placement?

9 A. Retail formulary placement,
10 yes.

11 Q. Okay. And what did that
12 look like?

13 Who had those negotiations
14 and -- and what were they about?

15 A. Again, it's getting a
16 product -- CVS to stock a product in
17 their retail stores and in their mail
18 order. That's -- so it would include the
19 rep, myself, and maybe Ara, maybe Doug,
20 depending on the size of the account.

21 Q. And would the outcome of
22 those negotiations be in a single
23 contract with everything else or would
24 that be part of a separate standalone

1 contract?

2 A. Depends on the account.

3 Some, like CVS was every contract --
4 every product stood on its own two feet.

5 Q. You mean --

6 A. Depends.

7 Q. -- for CVS, every product
8 had its own contract?

9 A. Yep.

10 Q. And for CVS, if they had --
11 if they had a contract for oxycodone,
12 would the formulary placement be in that
13 one contract or would it be in a separate
14 contract?

15 A. It would be -- it's one --
16 it's a one-page document for each
17 product.

18 Q. Okay.

19 A. Just giving you -- every
20 customer is unique with their needs. So
21 we have to tailor -- they are the boss.
22 We have to tailor our contracting
23 negotiation through their needs.

24 Q. So you mentioned earlier the

1 National Association of Chain Drug
2 Stores?

3 A. I did.

4 Q. And did you go to a number
5 of conferences with National Association
6 of Chain Drug Stores?

7 A. Yes.

8 Q. And what was the purpose of
9 those?

10 A. To meet with chains and the
11 major -- the major chains, all the
12 chains, and the whole -- some of the
13 larger wholesalers at that meeting.

14 Q. And apart from the chain
15 drug stores and the larger wholesalers,
16 who else would attend those meetings?

17 A. Vendors, generic vendors,
18 branded vendors.

19 Q. Generic vendors like who?

20 A. Actavis.

21 Q. And your competitors?

22 A. Sometimes. I don't -- you
23 know, whoever -- whoever paid to attend
24 these meetings.

1 Q. All drug vendors or just
2 generic drug vendors?

3 A. No. At any CDS,
4 generic/branded companies, OTC companies,
5 food vendors, anything that a CDS store
6 sells, their vendors would be there.

7 Q. Would the manufacturers
8 of -- of your products be there?

9 A. I'm -- I'm a manufacturer.

10 Q. Sorry. Sorry.

11 Anybody else that would
12 attend those meetings that you can
13 recall?

14 A. Associations like any CDS,
15 the wholesaler association, the -- the
16 people from Washington DC that run these
17 associations that -- that they have
18 there.

19 Q. Any pain advocacy groups
20 that you recall?

21 A. I don't recall any pain --
22 meeting with any pain -- what did you
23 call it?

24 Q. Pain advocacy groups.

1 A. I don't recall them being at
2 any CDS.

3 Q. How about Pain Care Forum?

4 A. I don't even know what that
5 is.

6 Q. American Pain Society?

7 A. I don't know who they are.

8 Q. Have you heard of any of
9 these, let's go through the list, HDA
10 Research Foundation?

11 A. What is it?

12 Q. HDA Research Foundation?

13 A. No.

14 Q. Center for Healthcare Supply
15 Chain Research?

16 A. No.

17 Q. National Wholesale Druggist
18 Association?

19 A. There's like a -- sorry.
20 But there's --

21 Q. National Wholesale Druggist
22 Association?

23 A. Yes.

24 Q. You've heard of that one?

1 A. Yes.

2 Q. And would that be the type
3 of organization that would attend trade
4 shows like those put on by NACDS?

5 A. Possibly.

6 Q. And how about American
7 Academy of Pain Medicine?

8 A. No.

9 Q. Federation of State Medical
10 Boards?

11 A. I don't recall them being
12 there.

13 Q. You don't recall them being
14 at NACDS's trade show or at any of the
15 trade shows?

16 A. No, we are just speaking
17 NACDS.

18 Q. All right. Do you recall
19 Federation of State Medical Boards
20 attending any of the other trade shows?

21 A. I -- they -- they could have
22 been there. They didn't meet with us.
23 So I don't recall meeting with these
24 people today when we -- when I attended

1 those shows for NACDS for Actavis.

2 Q. Okay. How about -- are you
3 familiar with the Alliance For Patient
4 Access?

5 A. No.

6 Q. How about the U.S. Pain
7 Foundation?

8 A. No.

9 Q. American Geriatric Society?

10 A. No.

11 Q. Pharmaceutical Research and
12 Manufacturers of American -- of America?

13 A. No.

14 Q. Cares Alliance?

15 A. There's Care Alliance that
16 was a distributor, I believe. But they
17 may not be the same one you're
18 referencing.

19 Q. Was the Care Alliance -- did
20 you have interaction with Care Alliance?

21 A. Was it -- where was it
22 located?

23 Q. I don't know.

24 A. Oh. Because if that were

1 Care, it was a distributor -- I never
2 dealt with Care Alliance. But there was
3 a -- you asked me if I ever heard of
4 them. There was a Care -- there was a
5 buying group I thought that had that
6 name.

7 Q. Okay. Have you heard of
8 Healthcare Distribution Alliance?

9 A. No.

10 Q. Did you ever hear that
11 Actavis participated in any advisory
12 boards?

13 A. I -- I was on the McKesson
14 advisory board for one or two years. And
15 I was on the -- maybe the NACDS planning
16 board for a year. I was on a few -- few,
17 what I call planning boards for meetings.

18 Q. Any other boards, advisory
19 boards that you are aware that Actavis
20 was involved in?

21 A. Actavis generic? Can I --

22 Q. Actavis generally.

23 A. I -- any boards that we were
24 involved in? No. I think what I stated.

1 McKesson -- I was on the McKesson vendor
2 board, and I believe I was on the NACDS
3 planning board for one year and maybe a
4 small grocery store meeting.

5 Q. And what were your
6 responsibilities on the McKesson advisory
7 board?

8 A. I attended a -- it was maybe
9 a four-hour meeting on -- on ways
10 McKesson could improve working with
11 vendors.

12 Q. Do you recall what was
13 recommended to McKesson to improve on --
14 in their --

15 A. I do not.

16 Q. You don't recall anything
17 about that?

18 A. I do not.

19 Q. Were there notes -- notes
20 taken of that meeting?

21 A. Not by me.

22 Q. Do you recall what your
23 responsibilities were with respect to the
24 NACDS planning board?

1 A. Suggest -- reviewing the
2 format of the meeting and -- and just top
3 line inputting from a vendor standpoint
4 to NACDS how to improve the meeting so it
5 was more productive.

6 Q. Well, what was the purpose
7 of the meeting?

8 A. To get -- to give NACDS
9 vendor input and advise -- advise NACDS
10 to improve -- how ways they can improve
11 their meeting, either the schedule,
12 maybe -- maybe the booth layout. Maybe
13 the -- the meals they were serving,
14 things like that.

15 Q. Meaning how NACDS could
16 improve their trade show?

17 A. Yes. Yes.

18 Q. And how many meetings did
19 you attend as part of the NACDS planning
20 board?

21 A. This again goes back
22 probably five or six years. I
23 probably -- I can recall one for sure.

24 Q. But there may have been

1 more?

2 A. Not many more. Maybe less
3 than -- one or two I would say, to my
4 knowledge right now that I attended.

5 Q. And who else was on those
6 boards with you, was on the NACDS
7 planning board with you?

8 A. Other vendors across --
9 across -- it could be food vendors. It
10 could be plastic bag vendors. It could
11 be cookie vendors. It was across --

12 Q. Who else involved in
13 pharmaceuticals was on the NACDS planning
14 board with you?

15 A. I don't recall --

16 Q. You don't recall anybody?

17 A. -- anyone from that advisory
18 board as I sit here today, who was on
19 with me.

20 Q. Okay. Do you recall anyone
21 that was on the McKesson advisory board
22 with you?

23 A. Maybe the woman from
24 Greenstone.

1 Q. What's Greenstone?

2 A. It's a generic manufacturer,
3 a generic division of Pfizer.

4 Q. Do you recall anybody else
5 on the McKesson advisory board with you?

6 A. Yeah. I believe -- I
7 believe Andy Boyer was on that with me
8 too.

9 Q. Where is he from?

10 A. Watson.

11 Q. Anybody else?

12 A. I mean, this is awhile ago
13 too. A representative from Teva, but I
14 don't know who -- who that was.

15 Q. Anybody else?

16 A. Not that I can think of.

17 Q. Can you recall if anybody
18 from Purdue was on the advisory board,
19 the McKesson advisory board?

20 A. No. These were generic
21 manufacturers.

22 Q. And do you -- do you recall
23 if Mallinckrodt was -- anybody from
24 Mallinckrodt was on either of those

1 advisory boards?

2 A. I don't, as we sit here now,
3 I don't recall if somebody was from
4 Mallinckrodt at that meeting, or at the
5 advisory board for McKesson.

6 Q. You don't recall either way?

7 A. I don't -- without looking
8 at a list of attendees, I wouldn't know
9 if -- and I believe I attended it one or
10 two years. I'm not sure if someone from
11 Mallinckrodt was there.

12 Q. And those years would have
13 been when exactly?

14 A. I think '11 and '12, I
15 believe, to the best of my ability.

16 Q. And when were the NACDS
17 planning board meetings?

18 A. They're a long time ago.

19 Q. For NACDS, would that also
20 have been '11 and '12?

21 A. No. That was, I would say,
22 '8, '9.

23 Q. 2008, 2009?

24 A. Yeah, I can't even barely

1 remember that advisory board.

2 Q. Okay. Were you aware that
3 Actavis was tracking data for -- for all
4 orders of all of its generic drugs, not
5 only for its distributor customers, but
6 also for its downstream customers?

7 MR. ROTH: Object to form.

8 MR. LUXTON: Objection to
9 form.

10 THE WITNESS: I'm confused
11 by your question.

12 BY MS. BAIG:

13 Q. Did Actavis track data for
14 its drugs for not only its distributor
15 customers, but also for their customers?

16 MR. LUXTON: Objection to
17 form.

18 THE WITNESS: Did Actavis
19 track -- for all products?

20 BY MS. BAIG:

21 Q. For the generic -- for the
22 generic opioid products which were in
23 your division.

24 A. I believe that to be part of

1 our suspicious order monitoring of
2 knowing the customers' customer.

3 Q. And where was that data
4 kept?

5 A. I don't know.

6 MS. BAIG: Let's have this
7 document marked as Exhibit 23.

8 (Document marked for
9 identification as Exhibit
10 Allergan-Perfetto-23.)

11 MS. BAIG: That's one
12 document.

13 MR. LUXTON: One document.

14 MS. BAIG: One exhibit.
15 Here's a copy of it.

16 MR. LUXTON: Thanks. Is
17 there one copy? Yeah, so -- okay.
18 I just saw -- thanks.

19 MS. BAIG: They are
20 staggered because they're not
21 stapled.

22 MR. LUXTON: Yeah, that's
23 all right. It's three altogether,
24 right, a cover page and two? All

1 right. Got it.

2 BY MS. BAIG:

3 Q. This is a document which
4 begins as an e-mail from Jinping
5 McCormick to you --

6 A. Yep.

7 Q. -- dated September 1st,
8 2011.

9 Do you see that?

10 A. Yep.

11 Q. It's ACQUIRED_ACTAVIS Bates
12 stamp 00945486.

13 Do you see that?

14 A. Yes.

15 Q. Okay. And it says, "All,
16 the detailed chargeback finance has
17 processed provide us a good picture of
18 oxymorphone ER stocking at the pharmacy
19 level. Since launching in July 15th, a
20 total number of 671 pharmacies had
21 submitted chargeback data for 883 bottles
22 on 15 milligrams. Details of pharmacy
23 locations are in the attached file. Hope
24 this helps pinpoint the pharmacy location

1 with our product. Walmart is leading the
2 chargeback. We sell products directly to
3 Walgreens, 15 milligrams only, which is
4 why we don't have visibility via
5 chargeback."

6 Do you see that?

7 A. Yes.

8 Q. Okay. And the subject of it
9 is, "Oxymorphone ER pharmacy placement
10 details via chargeback," correct?

11 A. Yes.

12 Q. And when you look at the
13 attachment, does this look like to be a
14 example of the chargeback data that was
15 being kept for various of the drugs, or
16 what is this?

17 A. Again, this product is the
18 product I discussed earlier that the
19 brand -- the brand discontinued the
20 milligram that we launched generically.

21 Q. Okay. So --

22 A. So we had to do extra effort
23 in order to find out where the product
24 was, so that -- and just a lot more

1 administrative stuff because -- to sell
2 this product, because we didn't have the
3 brand being written by doctors anymore,
4 because the brand had eliminated the 15
5 and 30-milligram Opana ER in anticipation
6 of us launching a generic.

7 Q. So is it your understanding
8 that Actavis was maintaining the data for
9 the drugs that it sold all the way down
10 to the pharmacy level?

11 A. I believe finance has
12 chargebacks data. Finance does
13 chargebacks. So finance would have had
14 the chargeback data. I'm not sure
15 whether they have it for every product,
16 but for wholesalers is who you get
17 chargebacks from.

18 Q. Okay. And did you have
19 access to that data?

20 A. Me personally?

21 Q. Mm-hmm.

22 A. I would believe I would have
23 access, yeah.

24 Q. Okay. Do you recall ever --

1 ever seeking that data, or looking at it
2 on a regular basis?

3 A. I would -- I would
4 occasionally look at -- not chargeback
5 data, but reports that are developed off
6 of chargebacks.

7 Q. For what purpose?

8 A. To see what our indirect
9 sales were, because chargeback -- it's
10 never -- it can be more than down to the
11 pharmacy level. It can be to a major
12 customer that's buying indirect.

13 MS. BAIG: All right. I
14 don't have any further questions.

15 THE WITNESS: Thank you.

16 MR. LUXTON: No questions.

17 MS. BAIG: Thank you for
18 your time.

19 THE WITNESS: Thank you.
20 Thanks a lot.

21 THE VIDEOGRAPHER: This
22 marks the end of today's
23 deposition. The time is 5:50 p.m.
24 Going off the record.

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(Excused.)

(Deposition concluded at
approximately 5:50 p.m.)

1
2 CERTIFICATE
3
4

5 I HEREBY CERTIFY that the
6 witness was duly sworn by me and that the
7 deposition is a true record of the
8 testimony given by the witness.

9 It was requested before
10 completion of the deposition that the
11 witness, MICHAEL PERFETTO, have the
12 opportunity to read and sign the
13 deposition transcript.

14
15 _____
16 MICHELLE L. GRAY,
17 A Registered Professional
18 Reporter, Certified Shorthand
19 Reporter, Certified Realtime
20 Reporter and Notary Public
21 Dated: December 21, 2018
22
23
24

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2
3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.

8 After doing so, please sign
9 the errata sheet and date it.

10 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.

14 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.

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1
2 ACKNOWLEDGMENT OF DEPONENT

3
4 I, _____, do
5 hereby certify that I have read the
6 foregoing pages, 1 - 407, and that the
7 same is a correct transcription of the
8 answers given by me to the questions
9 therein propounded, except for the
10 corrections or changes in form or
11 substance, if any, noted in the attached
12 Errata Sheet.

13
14
15 _____
16 MICHAEL PERFETTO

DATE

17
18
19 Subscribed and sworn
to before me this

20 _____ day of _____, 20____.

21 My commission expires: _____

22 _____
23 Notary Public
24

	LAWYER'S NOTES		
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